



Regulatory Reform Under ESHB 1010

Impacts of Significant Legislative Rulemaking Requirements (2004-2005)

**Governor's Executive Policy Office
Office of Financial Management
State of Washington**

January 2006



STATE OF WASHINGTON

OFFICE OF FINANCIAL MANAGEMENT

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January 2005

TO: The Honorable Lisa Brown
Senate Majority Leader

The Honorable Mike Hewitt
Senate Republican Leader

The Honorable Frank Chopp
Speaker of the House of Representatives

The Honorable Richard DeBolt
House Republican Leader

FROM: Victor A. Moore, Director

SUBJECT: Biennial Report on the Effects of ESHB 1010 Regulatory Reform

This report is required of the Office of Financial Management (OFM) by Engrossed Substitute House Bill 1010, the regulatory reform measure approved by the Legislature and signed into law in 1995. ESHB is now codified as RCW 34.05.328(6).

It summarizes the experience of state regulatory agencies in making rules under the significant legislative rulemaking provisions of the law during 2004 and 2005. In compiling the report, OFM asked agencies to consult with their clients, customers, and representatives of the regulated community in assessing their experience with the law. OFM has summarized their experience and has included the reports from individual agencies in the Appendix of this document.

This year OFM also requested comments on RCW 34.05.328(6) from business associations, environmental and labor organizations, and city and county associations. We received no responses from these stakeholders.

If you require more detailed information about the effect of this law, please contact the agencies directly.

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Impacts of Significant Legislative Rulemaking Requirements (2004-2005)

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Regulatory Reform Under ESHB 1010

Impacts of Significant Legislative Rulemaking Requirements (2004-2005)

ENGROSSED SUBSTITUTE HOUSE BILL (ESHB) 1010, the omnibus regulatory reform bill enacted in 1995, imposed many new regulatory duties on state agencies. Among these new duties were more detailed rulemaking requirements for “significant legislative rules” under RCW 34.05.328. Significant legislative rules are defined as those that are used to adopt substantive provisions of law, the violation of which results in a penalty or sanction, establish or change qualifications for a license or permit, or result in a significant change to a policy or regulatory program.

Significant legislative rulemaking requirements include that agencies determine the costs and benefits of a new rule, determine least burdensome alternatives, coordinate regulations with the requirements of state and federal law, and develop an implementation, evaluation, and education plan.

A copy of RCW 34.05.328 is attached to this report in the appendices.

ESHB 1010 requires the Office of Financial Management (OFM) to report on the experience of the named regulatory agencies in carrying out these rulemaking requirements in January of each even-numbered year. This report summarizes the implementation reports received by OFM from the following agencies: Department of Ecology (ECY), Department of Fish and Wildlife (DFW), Department of Health (DOH), Department of Labor and Industries (L&I), Department of Natural Resources (DNR), Department of Revenue (DOR), and Department of Social and Health Services (DSHS), Employment Security Department (ESD) Forest Practices Board (FPB), and Office of the Insurance Commissioner (OIC). DNR reported no adoption of significant legislative rules and, therefore, no impacts over the last two years.

The reports explain the agencies’ experiences with significant legislative rulemaking for calendar years 2004 and 2005. They contain a list of rules adopted under the requirements of RCW 34.05.328, the impacts on the substance of the rules, a summary of additional costs associated with the process, a description of legal actions for failure to comply with the requirements, adverse effects of the law, and a summary of the comments from the regulated community and others regarding the requirements and the acceptability of the rules adopted under them.

Copies of each agency’s report are attached in the appendices.

Types of Rules and Impacts on Substance

List of rules adopted under RCW 34.05.328 since January 1, 2004, and how compliance with these requirements affected the substance of the rule, if any, as adopted.

Agencies adopt a wide variety of significant legislative rules. The individual reports in Appendix B include a complete list of the significant legislative rules adopted by each agency. Examples of such rules adopted during the last two years include:

Department of Ecology

Dangerous Waste
Carbon Dioxide Mitigation Program for
Fossil-fueled Thermal Electric Generating
Facilities
Air Pollution
Solid Waste Handling Standards

Department of Fish and Wildlife

Miscellaneous Hydraulic Projects – Permit
Requirements and Exemptions

Department of Health

Newborn Screening
Water Recreation Facilities
Food Code
Residential Treatment Facilities
On-site Wastewater Sewage Systems

Department of Labor and Industries

Machine Safety
Ground Personnel
Explosives
Motor Vehicles
Crime Victims' Compensation Provider
Reimbursement Rates

Department of Revenue

Timber Excise Tax – Stumpage Value
Tables

Department of Social and Health Services

Home and Community Programs
Licensing Requirements for Overnight
Youth Shelters
Childcare and Early Learning
Services Subject to Estate Recovery

Employment Security Department

Applying for Unemployment Benefits
Job Separation
Job Search Requirements
Reporting of Wages and Taxes Due

Forest Practices Board

Marbled Murrelet
Cultural Resources

Office of the Insurance Commissioner

2001 Commissioner's Standard and
Ordinary Mortality Table
Rental Car Insurance Limited Agent License
Standards for Coverage of Chemical
Dependency
Credit Life, Credit Accident and Health
Insurance

Cost Impacts

Summary of additional costs associated with the more intensive rulemaking requirements for significant legislative rules.

Because of the many variables associated with rulemaking, most agencies were not able to report detailed cost information specific to ESHB 1010. However, anecdotal reports from agencies adopting significant legislative rules noted additional costs associated with:

- Increased staff time for planning and implementing rulemaking requirements.
- Increased staff time for development and review of cost-benefit analysis.
- Higher level of stakeholder involvement and public meetings.
- Printing, postage and other expenses associated with disseminating cost-benefit analyses and related documents required by the statute.

Legal Actions

Description of any legal actions against your agency for failure to comply with RCW 34.05.328, costs of such actions, and the status or outcome of the action.

Skagit County brought suit against the Department of Ecology in 2003 for procedural violations of the Administrative Procedures Act. Several tribes intervened and the county amended its complaint in 2005 to add substantive violations. The litigation has been continued so that the agency may engage in rule making, with the involvement of the parties, in an effort to settle this dispute.

Thurston County Superior Court Case No. 03-0201739-3 was filed by the “Assisted Living Legal Defense Fund” and challenged both the content of the 2003 boarding home rules and the Department’s process to adopt the rules. In part to answer issues raised by the boarding home industry and to implement two 2004 Session Laws, the Department of Social and Health Services decided to repeal the 2003 boarding home licensing rules that were the subject of the lawsuit and proposed and adopted new replacement rules in chapter 388.78A WAC. New boarding home licensing rules, and the repeal of the 2003 rules, were adopted on July 30, 2004. In August 2004 the lawsuit was withdrawn and the case formally dismissed.

Other agencies reported no significant legal or implementation problems in carrying out ESHB 1010.

Adverse Effects

Extent to which significant legislative rulemaking requirements have adversely affected the capacity of your agency to fulfill its legislative-prescribed mission.

None of the agencies reported that the significant legislative rule development adversely affected the capacity of the agency to fulfill its legislatively prescribed mission.

Agencies reported that the requirements do add cost and time to the rule-making process. The Departments of Health and Social and Health Services note that significant rule development and analysis can cause a delay in adopting regulations supported by the regulated community. The Office of the Insurance Commissioner reported that the process has slowed the agency’s

response to changing circumstances and, because the processes are more complex and time-consuming, fewer issues can be addressed.

Rule Acceptability

Description of any measurable increase or decrease in the acceptability by the regulated community of rules adopted under these requirements.

Most agencies reported no information regarding changes in the acceptability of agency rules resulting from ESHB 1010. Some agencies have received positive comments from their customers regarding increased information available to the regulated community, which results in more specific comments from stakeholders and a better understanding of the decision-making by the agency.

Stakeholder Comments

Comments you have received from stakeholders on the impacts of significant legislative rulemakings requirements.

The Department of Ecology reported that stakeholders have expressed both positive and negative comments on the significant legislative rule-making requirements. Some interested parties say they appreciate the additional information that is offered as a result of documents prepared to meet requirements.

Stakeholders associated with the Employment Security Department expressed appreciation for openness during the rule-making process and stated that they are provided more opportunity for input.

The Office of the Insurance Commissioner provided examples of some aspects of the rule-making process, which can confuse stakeholders.

Other Information from Agencies

Other relevant information, such as how rulemaking has changed in your agency since 1995, and whether the significant legislative rulemaking requirements have helped or hindered in fulfilling your agency's mission.

The rulemaking process in the Department of Health has changed dramatically since 1995 with 11 full-time employees either partially or entirely devoted to rulemaking. Current focus is on refining the process, improving coordination and communication, and enhancing rule tracking and reporting systems.

The Department of Revenue continues efforts to make rulemaking information more accessible to the public, to eliminate unneeded rules and consolidate information, and to use interpretive documents to provide timely information to taxpayers and employees if the standard rulemaking process has not been completed.

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Impacts of Significant Legislative Rulemaking Requirements (2004-2005)

APPENDICES

Text of RCW 34.05.328 and Individual Agency Reports

Text of RCW 34.05.328 Significant legislative rules

Department of Ecology

Department of Fish and Wildlife

Department of Health

Department of Labor and Industries

Department of Natural Resources

Department of Revenue

Department of Social and Health Services

Employment Security Department

Forest Practices Board

Office of Insurance Commissioner

RCW 34.05.328

Significant legislative rules, other selected rules.

(1) Before adopting a rule described in subsection (5) of this section, an agency shall:

(a) Clearly state in detail the general goals and specific objectives of the statute that the rule implements;

(b) Determine that the rule is needed to achieve the general goals and specific objectives stated under (a) of this subsection, and analyze alternatives to rule making and the consequences of not adopting the rule;

(c) Provide notification in the notice of proposed rule making under RCW [34.05.320](#) that a preliminary cost-benefit analysis is available. The preliminary cost-benefit analysis must fulfill the requirements of the cost-benefit analysis under (d) of this subsection. If the agency files a supplemental notice under RCW [34.05.340](#), the supplemental notice shall include notification that a revised preliminary cost-benefit analysis is available. A final cost-benefit analysis shall be available when the rule is adopted under RCW [34.05.360](#);

(d) Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented;

(e) Determine, after considering alternative versions of the rule and the analysis required under (b), (c), and (d) of this subsection, that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated under (a) of this subsection;

(f) Determine that the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law;

(g) Determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law;

(h) Determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified by the following:

(i) A state statute that explicitly allows the agency to differ from federal standards; or

(ii) Substantial evidence that the difference is necessary to achieve the general goals and specific objectives stated under (a) of this subsection; and

(i) Coordinate the rule, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.

(2) In making its determinations pursuant to subsection (1)(b) through (h) of this section, the

agency shall place in the rule-making file documentation of sufficient quantity and quality so as to persuade a reasonable person that the determinations are justified.

(3) Before adopting rules described in subsection (5) of this section, an agency shall place in the rule-making file a rule implementation plan for rules filed under each adopting order. The plan shall describe how the agency intends to:

(a) Implement and enforce the rule, including a description of the resources the agency intends to use;

(b) Inform and educate affected persons about the rule;

(c) Promote and assist voluntary compliance; and

(d) Evaluate whether the rule achieves the purpose for which it was adopted, including, to the maximum extent practicable, the use of interim milestones to assess progress and the use of objectively measurable outcomes.

(4) After adopting a rule described in subsection (5) of this section regulating the same activity or subject matter as another provision of federal or state law, an agency shall do all of the following:

(a) Provide to the *business assistance center a list citing by reference the other federal and state laws that regulate the same activity or subject matter;

(b) Coordinate implementation and enforcement of the rule with the other federal and state entities regulating the same activity or subject matter by making every effort to do one or more of the following:

(i) Deferring to the other entity;

(ii) Designating a lead agency; or

(iii) Entering into an agreement with the other entities specifying how the agency and entities will coordinate implementation and enforcement.

If the agency is unable to comply with this subsection (4)(b), the agency shall report to the legislature pursuant to (c) of this subsection;

(c) Report to the joint administrative rules review committee:

(i) The existence of any overlap or duplication of other federal or state laws, any differences from federal law, and any known overlap, duplication, or conflict with local laws; and

(ii) Make recommendations for any legislation that may be necessary to eliminate or mitigate any adverse effects of such overlap, duplication, or difference.

(5)(a) Except as provided in (b) of this subsection, this section applies to:

(i) Significant legislative rules of the departments of ecology, labor and industries, health, revenue, social and health services, and natural resources, the employment security department, the forest practices board, the office of the insurance commissioner, and to the legislative rules of the department of fish and wildlife implementing chapter [77.55](#) RCW; and

(ii) Any rule of any agency, if this section is voluntarily made applicable to the rule by the agency, or is made applicable to the rule by a majority vote of the joint administrative rules review committee within forty-five days of receiving the notice of proposed rule making under RCW [34.05.320](#).

(b) This section does not apply to:

(i) Emergency rules adopted under RCW [34.05.350](#);

(ii) Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party;

(iii) Rules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;

(iv) Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect;

(v) Rules the content of which is explicitly and specifically dictated by statute;

(vi) Rules that set or adjust fees or rates pursuant to legislative standards; or

(vii) Rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.

(c) For purposes of this subsection:

(i) A "procedural rule" is a rule that adopts, amends, or repeals (A) any procedure, practice, or requirement relating to any agency hearings; (B) any filing or related process requirement for making application to an agency for a license or permit; or (C) any policy statement pertaining to the consistent internal operations of an agency.

(ii) An "interpretive rule" is a rule, the violation of which does not subject a person to a penalty or sanction, that sets forth the agency's interpretation of statutory provisions it

administers.

(iii) A "significant legislative rule" is a rule other than a procedural or interpretive rule that (A) adopts substantive provisions of law pursuant to delegated legislative authority, the violation of which subjects a violator of such rule to a penalty or sanction; (B) establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit; or (C) adopts a new, or makes significant amendments to, a policy or regulatory program.

(d) In the notice of proposed rule making under RCW [34.05.320](#), an agency shall state whether this section applies to the proposed rule pursuant to (a)(i) of this subsection, or if the agency will apply this section voluntarily.

(6) By January 31, 1996, and by January 31st of each even-numbered year thereafter, the office of financial management, after consulting with state agencies, counties, and cities, and business, labor, and environmental organizations, shall report to the governor and the legislature regarding the effects of this section on the regulatory system in this state. The report shall document:

(a) The rules proposed to which this section applied and to the extent possible, how compliance with this section affected the substance of the rule, if any, that the agency ultimately adopted;

(b) The costs incurred by state agencies in complying with this section;

(c) Any legal action maintained based upon the alleged failure of any agency to comply with this section, the costs to the state of such action, and the result;

(d) The extent to which this section has adversely affected the capacity of agencies to fulfill their legislatively prescribed mission;

(e) The extent to which this section has improved the acceptability of state rules to those regulated; and

(f) Any other information considered by the office of financial management to be useful in evaluating the effect of this section.

[2003 c 165 § 2; 2003 c 39 § 13; 1997 c 430 § 1; 1995 c 403 § 201.]

NOTES:

Reviser's note: *(1) The business assistance center and its powers and duties were terminated June 30, 1995. RCW [43.31.083](#), [43.31.085](#), [43.31.087](#), and [43.31.089](#) were repealed by 1993 c 280 § 81, effective June 30, 1996.

(2) This section was amended by 2003 c 39 § 13 and by 2003 c 165 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW [1.12.025](#)(2). For rule of construction, see RCW [1.12.025](#)(1).

Findings -- Short title -- Intent -- 1995 c 403: "(1) The legislature finds that:

(a) One of its fundamental responsibilities, to the benefit of all the citizens of the state, is the protection of public health and safety, including health and safety in the workplace, and the preservation of the extraordinary natural environment with which Washington is endowed;

(b) Essential to this mission is the delegation of authority to state agencies to implement the policies established by the legislature; and that the adoption of administrative rules by these agencies helps assure that these policies are clearly understood, fairly applied, and uniformly enforced;

(c) Despite its importance, Washington's regulatory system must not impose excessive, unreasonable, or unnecessary obligations; to do so serves only to discredit government, makes enforcement of essential regulations more difficult, and detrimentally affects the economy of the state and the well-being of our citizens.

(2) The legislature therefore enacts chapter 403, Laws of 1995, to be known as the regulatory reform act of 1995, to ensure that the citizens and environment of this state receive the highest level of protection, in an effective and efficient manner, without stifling legitimate activities and responsible economic growth. To that end, it is the intent of the legislature, in the adoption of chapter 403, Laws of 1995, that:

(a) Unless otherwise authorized, substantial policy decisions affecting the public be made by those directly accountable to the public, namely the legislature, and that state agencies not use their administrative authority to create or amend regulatory programs;

(b) When an agency is authorized to adopt rules imposing obligations on the public, that it do so responsibly: The rules it adopts should be justified and reasonable, with the agency having determined, based on common sense criteria established by the legislature, that the obligations imposed are truly in the public interest;

(c) Governments at all levels better coordinate their regulatory efforts to avoid confusing and frustrating the public with overlapping or contradictory requirements;

(d) The public respect the process whereby administrative rules are adopted, whether or not they agree with the result: Members of the public affected by administrative rules must have the opportunity for a meaningful role in their development; the bases for agency action must be legitimate and clearly articulated;

(e) Members of the public have adequate opportunity to challenge administrative rules with which they have legitimate concerns through meaningful review of the rule by the executive, the legislature, and the judiciary. While it is the intent of the legislature that upon judicial review of a rule, a court should not substitute its judgment for that of an administrative agency, the court should determine whether the agency decision making was rigorous and deliberative; whether the agency reached its result through a process of reason; and whether the agency took a hard look at the rule before its adoption;

(f) In order to achieve greater compliance with administrative rules at less cost, that a cooperative partnership exist between agencies and regulated parties that emphasizes education and assistance before the imposition of penalties; and

(g) Workplace safety and health in this state not be diminished, whether provided by constitution, by statute, or by rule." [1995 c 403 § 1.]

Application -- 1995 c 403 §§ 201, 301-305, 401-405, and 801: "Sections 201, 301 through 305, 401 through 405, and 801 of this act shall apply to all rule making for which a statement of proposed rule making under RCW [34.05.320](#) is filed after July 23, 1995." [1995 c 403 § 1102.]

Part headings not law -- Severability -- 1995 c 403: See RCW [43.05.903](#) and [43.05.904](#).

Expedited adoption: RCW [34.05.353](#).



WASHINGTON STATE
DEPARTMENT OF
E C O L O G Y

Report on Impacts of Significant Legislative Rule Making

Prepared by:
Washington State Department of Ecology
Office of Governmental Relations
Rules Unit

November 2005

Introduction

Revised Code of Washington (RCW) 34.05.328(6) requires OFM to report to the Governor and the Legislature in January of each even-numbered year. The report must address how agencies are implementing significant legislative rule-making requirements as defined in chapter 34.05 RCW.

This report includes the following:

- A list of rules Ecology has adopted under significant legislative rule-making requirements (RCW 34.05.328) between January 1, 2004 and October 31, 2005, and how compliance with these requirements affected the content of the rules adopted.
- A summary of additional costs associated with the more intensive rule-making requirements.
- A description of legal actions against Ecology for failure to comply with RCW 34.05.328.
- The extent to which significant legislative rule-making requirements have adversely impacted Ecology's ability to fulfill its mission.
- Descriptions of any decrease or increase in the acceptability by the regulated community of rules adopted under the significant legislative rule-making requirements.
- A summary of comments from stakeholders on the impacts of the significant legislative rule-making requirements.

Rules Adopted Under Significant Legislative Rule-making Requirements

The following six adoptions were completed by Ecology between January 2004 and October of 2005.

Dangerous Waste	Chapter 173-303 WAC	11/30/2004
Carbon Dioxide Mitigation Program for Fossil-fueled Thermal Electric Generating Facilities	Chapter 173-407 WAC	12/22/2004
General Regulations for Air Pollution	Chapter 173-400 WAC	1/10/2005
Solid Waste Handling Standards	Chapter 173-350 WAC	5/10/2005
Water Resources Management Program – Entiat River Basin Water Resource Inventory Area (WRIA) 46	Chapter 173-546 WAC	8/3/2005
Instream Resources Protection Program Stillaguamish River - WRIA 5	Chapter 173-505 WAC	8/26/2005

The following rules are *expected* to be adopted in November and December of 2005:

- Amendments to the Underground injection control program (Chapter 173-218 WAC) and the State waste discharge permit program (Chapter 173-216 WAC)
- Adoption of a new chapter titled Motor Vehicle Emission Standards (Chapter 173-423 WAC).

It is difficult to say if the requirements under 328 directly affected the substance of the above mentioned rules however, Ecology has found that compliance with this section is beneficial to the rule-making process. For each of the above mentioned rules, application of the section 328 requirements affected the development of the rule in each of the following ways:

1. It enhanced the decision making process;
2. Increased information sharing with the public; and
3. Created a shared framework that became the basis for dialogue between Ecology and interested parties about what should be in the content of the final rule adoption.

1. Enhanced Decision Making:

As a result of the 328 requirements staff are more thoughtful and deliberate when making decisions related to rule-making. In making the determinations required under section 328, Ecology formally documents decisions related to the rule content. This documentation provides Ecology with a paper trail allowing us to record why certain content was, or was not included in the final rule adoption. Further, the 328 requirements mandate that Ecology must also examine economics when making decisions related to the rule-making. These tools provide Ecology with additional information that is used, in combination with relevant science, in evaluating draft rule proposals. In the end, Ecology looks at a broader spectrum of information, documents what data was reviewed and records information that will support the final determinations made by the agency.

2. Increased Information Sharing:

In order to comply with the requirements in section 328, Ecology must write several documents to show that the "determinations" required were made and demonstrate what information supports that determination. To assist in sharing this information, we developed templates to standardize how the information related to section 328 is prepared and presented to the public. Over time, interested parties have shown an increased expectation for the documents and more awareness of the types of information they contain. Often interested parties will use this information when submitting comments on the proposal or requests to make changes in the rule.

3. Shared Framework for Dialogue:

Comments received on the economic analyses since January 2004 has opened up conversations between Ecology and the public about the content of the proposed rule. These conversations led to language changes that were incorporated into the final rule language. Many stakeholders indicated that they were better informed and felt that they could submit better comments to Ecology on the rule language. Further, they felt that the economic analyses helped them understand why Ecology had to include certain language in the rule over other options that were suggested. Further, Ecology appreciated receiving comments from interested parties that were more specific. It helped staff understand the nature of the public's concerns and find ways to engage them in conversation related to those concerns.

Summary of Additional Costs Associated with More Intensive Rule-making

Actual costs associated with the significant legislative criteria requirements were not tracked separately from other rule-making activities. It is likely that many of the requirements would have been addressed in absence the requirements in RCW

34.05.328. In most cases, additional costs were associated with the extensive economic analysis required and informing and educating those affected by the rule.

Description of any legal actions against Ecology for failure to comply with RCW 34.05.328, costs of such actions, and the status or outcome of the action.

Skagit County brought suit against Ecology in 2003 for procedural violations of the APA. Several tribes intervened and the County amended its complaint in 2005 to add substantive violations. The litigation has been continued so that the agency may engage in rule making, with the involvement of the parties, in an effort to settle this dispute.

That litigation involves approximately .3 FTE of attorney time during the course of a year, spread out among several Assistant Attorneys General. Indirect costs of the litigation include delays in implementing mechanisms to address concerns with permit-exempt wells, hiring a mediator, and staff time for both litigation and negotiation efforts.

The most recent draft rulemaking proposal has not yet been circulated for public comment. Ecology is hopeful that it resolves the dispute but cannot speculate at this time.

The extent to which significant legislative rule-making requirements have adversely affected the capacity of Ecology to fulfill its legislatively prescribed mission.

The significant legislative requirements do add cost and time to the rule-making process. However, these requirements do not adversely affect the capacity of Ecology to fulfill its legislatively prescribed mission. Often times, varying interest groups involved in the public process will focus on aspects of the significant legislative analyses and use these to ask Ecology to make changes in the rule language that is being proposed for adoption. This too adds to the time necessary to complete a rule-making activity, although it does result in more interaction between Ecology and those interested parties.

Rule acceptability. Descriptions of any measurable increase or decrease in the acceptability by the regulated community of rules adopted under these requirements.

As a result of the analyses required under section 328, members of the public are provided with more details about information used for decision making in the rule-making process. This assists interest groups in understanding why Ecology drafted the rule the way in which it has. In several cases, stakeholders stated that they may not like what they see in the rule, but, as a result of reading the significant legislative documentation, they understand why Ecology made the decision to write the rule in the way that they had chosen.

Stakeholder comments. Comments from counties, cities, businesses, labor, and environmental organizations on the impacts significant legislative rule-making requirements.

Depending on the content of the rule, and the parties affected by the proposed rule, stakeholders have expressed both positive and negative impacts of the significant legislative rule-making requirements.

Not all of the procedural requirements are of a primary concern to the regulated community. Often times they do not understand the need to expend resources for the task nor do they appreciate the delays that result in complying with section 328. It is not known whether the delay in rule-adoption was an equitable trade for the improved quality of the rule resulting from the rule-making requirements.

On the other hand, some interested parties indicate that they appreciate the additional information that is offered as a result of documents prepared to meet the 328 requirements. They indicate that they can better understand why Ecology is making the decisions they are making, and feel better prepared to offer comments to Ecology about the rule making.

Hooper, Jodi

From: Evan Jacoby [JACOBESJ@DFW.WA.GOV]
Sent: Wednesday, October 12, 2005 5:05 PM
To: Hooper, Jodi
Cc: Davis, Tom; Koenings, Jeff; Peck, Larry
Subject: Significant Legislative Rulemaking Reports

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Ms. Hooper:

The Department of Fish and Wildlife (WDFW) only does significant legislative rule analysis for hydraulics rules. RCW 34.05.328(5)(a)(i). From January 1, 2004 to date, WDFW has adopted only two rules in the hydraulics chapter (Chap. 220-110 WAC).

1. List of agency rules adopted:

On June 22, 2005, we adopted a housekeeping amendment to WAC 220-110-170 "Outfall structures" that eliminated an internal reference to a WAC that was never adopted. This was done under expedited rule-making and no significant legislative rule analysis was prepared. RCW 34.05.353(3).

On November 24, 2004 we adopted an amendment to WAC 220-110-035 "Miscellaneous hydraulic projects--Permit requirements and exemptions" that integrated forest practices applications and hydraulics applications. A significant legislative rule analysis was prepared for this amendment. Compliance with the requirement did not affect the substance of the rule.

2. Additional costs:

There were no additional costs.

3. Legal actions:

There was no legal action taken on this rule.

4. Adverse effects:

No adverse effects from compliance with significant legislative rulemaking have occurred.

5. Acceptability:

No measurable increase or decrease in acceptability by the regulated community has occurred because of significant legislative rulemaking..

6. Comments:

We have received no comments on the impacts of significant legislative rulemaking requirements.

7. Changes in rulemaking:

Because of limited application of significant legislative rulemaking to rulemaking by WDFW, these requirements have had virtually no effect on the department.

Sincerely,
Evan Jacoby
Rules Coordinator



2005 Significant Legislative Rulemaking Report

November 14, 2005

Introduction

In 1995 the legislature made substantial changes to the Administrative Procedures Act, Chapter 34.05 RCW. For state agencies, perhaps the most important change was the addition of certain tasks agencies must complete when adopting significant legislative rules. These tasks include demonstrating that probable benefits exceed probable costs, and that the significant rule minimizes the regulatory burden. This requirement applies to only ten state agencies, including health, labor and industries, ecology, revenue, social and health services, natural resources, employment security, the insurance commissioner, fish and wildlife, and the forest practices board.

This report details the impact of RCW 34.05.328, significant legislative rules, on Title 246 of the Washington Administrative Code (WAC). A significant legislative rule is a rule that:

- adopts substantive provisions of law pursuant to delegated legislative authority, the violation of which subjects a violator of such rule to a penalty or sanction;
- establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit; or
- adopts a new, or makes significant amendments, to a policy or regulatory program.

This report includes a listing of significant rules adopted since December 2003 by the Department of Health (DOH), State Board of Health (SBOH), and the health professional boards and commissions with independent rulemaking authority. The Department of Health administers these rules, all of which are located within Title 246 of the Washington Administrative Code (WAC). The report identifies all significant rules adopted between December 2003 and November 2005 and the cost of these rules. In addition, the report identifies the adverse effects of the significant analysis requirements, the impact of the requirements on rule acceptability, and stakeholder comments regarding significant rules.

Table 1 lists the significant rules adopted since November 2003. The table provides the chapter number and title, date the order of adoption was filed with the Code Reviser, and the cost of developing the rule.

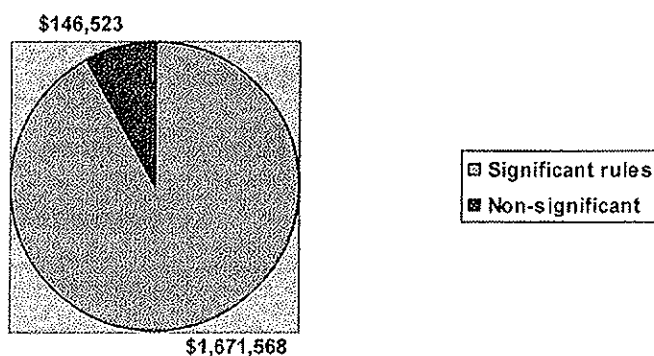
Table 1-- Significant Rules—November 2003 to Present

WAC Chapter	Description	Adopted By	Adoption Filed	Rule Cost
246-290	Group A Public Drinking Water Systems	SBOH	November 2003	\$81,403
246-650	Newborn Screening	SBOH	November 2003	\$114,583
246-870	Electronic Transfer of Prescription Information	Board of Pharmacy	December 2003	\$7,423
246-976	Designation Standards for Trauma Care Services	DOH	December 2003	\$12,747
246-360	Transient Accommodations (Hotel and Motels)	SBOH	November 2004	\$132,129
246-851-570, 600	Training for Oral Medication	Board of Optometry	December 2003	\$677
246-809-610, 620, 630	Licensed Counselor Continuing Education	DOH	February 2004	\$10,831
246-294	Drinking Water Operating permits	DOH	March 2004	\$32,524
246-915-085	Continuing Competency for Physical Therapists	Board of Physical Therapy	April 2004	\$15,867
246-915-182	Sexual Misconduct	Board of Physical Therapy	April 2004	\$11,739
246-976-161, 171, 930	Continuing Medical Education Training & Responsibilities (EMS & Trauma	DOH	April 2004	\$24,833
246-918-120	Remote Site Utilization Limitations	Medical Quality Assurance Commission	May 2004	\$7,051
246-976-935	Emergency Medical Services and Trauma Trust Account	DOH	June 2004	\$31,974
246-851	Schedule III-V Drugs	Board of Optometry	June 2004	\$6,722
246-915	Physical Therapy Definitions, Interim permits, Supervision	Physical Therapy Board	June 2004	\$12,381
246-840	Nursing Technician	Nursing Care Quality Assurance Commission	June 2004	\$6,663
246-260	Water Recreation Facilities	SBOH	September 2004	\$112,264
246-815	Dental Hygiene Examination and Licensure	DOH	October 2004	\$1,007

WAC Chapter	Description	Adopted By	Adoption Filed	Rule Cost
246-851	Optometry Continuing Education	Board of Optometry	October 2004	\$503
246-215	Food Code	SBOH	November 2004	\$230,696
246-915-050	Reinstatement	Board of Physical Therapy	January 2005	\$1,900
246-915-040	Approved Physical Therapy Schools	Board of Physical Therapy	February 2005	\$1,900
246-915-105	Approved Physical Therapy Assistant Schools	Board of Physical Therapy	February 2005	\$1,900
246-915-180	Professional Conduct Principles	Board of Physical Therapy	February 2005	\$1,900
246-834-250	Legend Drugs and Devices—Midwifery	DOH	March 2005	\$2,819
246-292	Water Works Operator Certification	DOH	March 2005	\$15,428
246-100-166	Immunization of Child Care and School Children	SBOH	April 2005	\$19,717
246-100-101	HIV Counseling and Testing and Partner Notification Services	SBOH	May 2005	\$26,898
246-840	Nursing Education Programs	Nursing Care Quality Assurance Commission	May 2005	\$32,352
246-802	Acupuncture Clinical Training and Application	DOH	June 2005	\$1,200
246-323, 325, 326	Residential Treatment Facilities	DOH	July 2005	\$112,154
246-272A	On-site Wastewater Sewage Systems	SBOH	July 2005	\$539,448
246-100-166	Immunizations of Childcare and School Aged Children	SBOH	July 2005	\$52,995
246-925-354	Records Maintenance and Retention	Psychology Board	September 2005	\$2,983
246-808-135	Licensure by Endorsement	Chiropractic Quality Assurance Commission	October 2005	\$1,134
246-887	Uniform Controlled Substances Chemical Capture	DOH	October 2005	\$2,823
Total cost for significant rule development				\$1,671,568

Since November 2003, the department spent almost \$1.7 million in rule development for 37 legislative significant rule development projects. Of this amount, seven rule development projects account for \$1,322,677 — almost 80 percent of the entire cost of significant rule development. The total cost of developing significant rules exceeds the total cost of all other non-significant rules developed during this same period by \$1,525,045. Chart 1 shows the cost differences between significant rule development and non-significant rule development.

Chart 1—Cost Differences Between Significant Rules and Non-Significant Rules



The department estimates the cost for rule development based on the cost of program staff time, public meetings, printing, postage and other expenses, including the cost of conducting the significant legislative rule analysis. Significant rules typically require a much higher level of stakeholder involvement and public meetings than non-significant rules. Stakeholder involvement in rule development is a core value in agency rule development. Although stakeholder involvement through surveys, mailings, and public meetings drives up the costs of rulemaking, the department has found that these efforts increase rule acceptability.

Legal Actions

There have been no legal actions against department for failure to comply with RCW 34.05.328.

Adverse Effects

There are a few adverse effects of significant rulemaking. The primary adverse effect is the length of time significant rule development requires. On average, it takes the department 16 months to develop non-significant rules. In contrast, the average time to develop a significant rule is approximately 28 months. In some cases, significant rule development can even longer.¹ The length of time it takes to adopt significant rules is frustrating for both staff and stakeholders. The length of a rule development process depends on the type of significant rule under development.

¹ For the purpose of this report, the length of rulemaking is based on the period between the filing of a CR-101, statement of inquiry and the filing of a CR-103 order of adoption. This period does not reflect the staff research and public outreach that may occur prior to the filing of the CR-101.

The Department of Health's experience indicates that there are two types of significant rules. One type is relatively straightforward — non-controversial rules. Examples include eliminating a state law exam for a health profession or changing existing continuing education requirements. The significant rule analysis has no effect on the content of these rules. These rules are typically less controversial and take less time because the regulated parties support and frequently request these types of changes. Stakeholders have expressed frustration about the requirement for significant analyses for these types of rules because they believe it causes a delay in adopting regulations supported by the regulated community.

The second type of significant rule is the complex significant analysis. The complexity of an analysis may reflect the difficulty to obtain data that sufficiently supports certain standards. Examples of data that are often difficult to obtain include the degree to which a standard alters public behavior or the public health risk or benefit associated with a certain standard, such as those in onsite waste water sewage rules. Data collection is a major component of significant analysis. If data are clear and readily available, the analysis is easier to conduct. If data are not available, the department may have to devote staff and resources to conduct the research necessary. The time and resources needed to complete the analysis can quickly increase the cost of a rule and delay its adoption and implementation.

There are occasions when the department is unable to quantify the benefits of the rule because a quantitative estimate requires information that the department does not have and is unable to obtain without significant and expensive studies. In these situations, the department may rely on qualitative measures to estimate the benefits of a rule². An example of a rule that required the department to rely on qualitative data was the rule that established an endorsement for massage practitioners to offer animal massage.

Rule Acceptability

The department has no data to show an increase or decrease in the acceptability of rules resulting from the completion of a significant analysis. It has been the department's experience that the type and level of communication with stakeholders improves the acceptability rather than the analytical requirements of RCW 34.05.328. For the most controversial rules completion of the analysis is not a determinant for rule acceptability. For example, during 2005, there were three petitions from petitioners who were dissatisfied with the outcome of rule development projects. In their petitions, the petitioners did not dispute the cost-benefit analyses, but called into question the underlying policy and legislative intent behind the rules.

Stakeholder Comments

In 2002, the department met with stakeholders to determine whether it was feasible to seek an exemption from some of the analytical requirements in RCW 34.05.328 and chapter 19.85 RCW. The department focused its inquiry on non-controversial, health profession significant rules, and rule changes requiring a Small Business Economic Impact Statement. The department received mixed messages from regulated parties. Some of the messages the department received were:

² RCW 34.05.328 allows agencies to use qualitative as well as quantitative analyses.

- The significant analysis should only be required for rules that had an adverse effect on the people regulated by the rule;
- The analytical requirements are just another delay in the process;
- Sometimes, the process should take longer.

The department elected not to pursue request legislation that would reduce the analytical requirements due to the lack of consensus among the credentialed health professions.

Other Information

This is the fifth report that the agency has submitted under RCW 34.05.328(6) since 1995. During that time, the department's rulemaking has changed dramatically. When the 1995 Regulatory Reform Act passed, the department had only one full-time employee devoted to rulemaking. The department now has 11 full-time employees either partially or entirely devoted to rulemaking. The department reworked its rule development procedures, trained agency staff, and stepped up its work with stakeholders. At this time, the department's focus is on refining the process, improving coordination and communication with regulated parties and regulatory agencies, and enhancing the agency's rule tracking and reporting system.



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

Mail correspondence to: PO Box 44410 • Olympia WA 98504-4410

October 12, 2005

To: Jodi Hooper, Governor's Executive Policy Office

From: Carmen Moore, Rules Coordinator
Department of Labor & Industries

SUBJECT: Labor & Industries Significant Legislative Rulemaking Report 2005

In response to your request dated October 5, 2005, the enclosed report identifies the impacts that the requirements of ESHB 1010 have had on Labor & Industries. The report covers the agency's significant legislative rulemaking activities since January 1, 2004.

If you have questions, please contact me at (360) 902-4206.

cc: Gary Weeks, Director
Christine Swanson, Legislative Liaison

**DEPARTMENT OF LABOR & INDUSTRIES
SIGNIFICANT LEGISLATIVE RULEMAKING REPORT 2005**

1. List of the rules L&I has adopted under significant legislative rulemaking requirements (RCW 34.05.328) since January 1, 2004.

Machine Safety, adopted June 29, 2004, WSR# 04-14-028

Necessary policies and requirements were incorporated into the rule and unnecessary design requirements and outdated terminology were removed. This rulemaking was part of our goal to rewrite all of L&I's general occupational safety and health rules for clarity.

Ground Personnel, adopted December 1, 2004, WSR # 04-24-089

After L&I adopted rules protecting flaggers in construction sites in January 2001, it received requests from stakeholders to review the rules regulating protection of construction workers on construction sites. There had been eight fatalities since 1999 that could have been prevented with rules that are more protective of construction workers. This rulemaking was promulgated to help reduce or eliminate the number of serious injuries and fatalities by increasing worker protection from vehicular traffic on construction sites.

Explosives, adopted April 5, 2005, WSR #05-08-110

This rulemaking corrected the inconsistency between chapter 70.74 RCW, Washington State Explosive Act, and chapter 296-52 WAC, Safety Standards for Possession and Handling of Explosives. The rulemaking changed the licensing requirements from two years to one year, in order to be consistent with the RCW. Recommendations from the FBI regarding bomb technicians were incorporated into the rule and housekeeping changes were made throughout the rule.

Motor Vehicles, adopted August 2, 2005, WSR # 05-16-099

The department rewrote the requirements relating to motor vehicles. This rulemaking was part of our goal to rewrite all of L&I's general occupational safety and health rules for clarity.

Crime Victims' Compensation (CVC) Provider Reimbursement Rates, rule was not adopted. CVC anticipated the possibility that it would have a financial shortfall prohibiting the program from continuing to reimburse providers at the L&I rate. As a result of the financial shortfall and in accordance with RCW 7.68.015 and 7.68.080 (2) (b), regular rulemaking was started to permanently amend WAC 296-30-090, reducing reimbursement rates to providers from the L&I rates to the Department of Social and Health Services (DSHS) rates.

This rulemaking was allowed to expire on July 5, 2005 then an expedited rulemaking was filed and adopted August 2, 2005 as WSR #05-16-096. The expedited rule adoption amended WAC 296-30-090 clarifying that the reimbursement rates for the crime victims' compensation will be established by the Department of Labor and Industries.

2. Summary of additional costs

The significant legislative rulemaking requirement of RCW 34.05.328 imposes additional costs to the agency in terms of dollars and staff. This section required a formal cost-benefit analysis,

in addition to a small business economic impact analysis. As a result, the agency has required additional staff time of its economists and assistant attorneys general to develop and review cost-benefit analyses.

3. Description of any legal actions

- **Ergonomics**

The Supreme Court of the State of Washington accepted for review *Washington Employers Concerned About Regulating Ergonomics, et al., v. Dep't of Labor and Indus.*, Case No. 4 73020-2, concerning L&I's ergonomic rule. Oral argument was heard on May 22, 2003. The Supreme Court did not provide a ruling because on December 4th, 2003, with the passage of Initiative 841, voters elected to repeal the ergonomics rule.

As the briefs are voluminous, they are not attached, but are available upon request or at: <http://www.lni.wa.gov/wisha/ergo/>.

4. Adverse effects

The significant legislative rulemaking requirements did not adversely affect the capacity of the agency to fulfill its legislatively prescribed mission.

5. Rule acceptability

There have been no detectable changes in acceptability of the agency's rules by the regulated community based solely on RCW 34.05.328.

6. Stakeholder comments

No stakeholder comments were received regarding the significant legislative rulemaking requirements.

7. Other relevant information

None.



November 8, 2005

Jodi Hooper, Governor's Executive Policy Office
Office of Financial Management
PO Box 43113
Olympia WA 98504-3113

SUBJECT: Significant Legislative Rulemaking Report – Department of Natural Resources

Dear Ms. Hooper:

In an effort to comply with RCW 34.05.328(6), and the Office of Financial Management (OFM) reporting requirements regarding Significant Legislative Rulemaking to the Governor and the Legislature, the Department of Natural Resources (DNR) submits the following:

Since January 2004, the DNR has not been involved in or initiated any Significant Legislative Rulemaking. The rulemaking activity initiated by the DNR has been limited to "Procedural" and/or "Interpretive" rulemaking.

If you have any additional questions, please contact Jenifer Gitchell, DNR Rules Coordinator at 360.902.1634 or via e-mail at Jenifer.Gitchell@wadnr.gov for further assistance.

Sincerely,

Doug Sutherland
Commissioner of Public Lands

c: Bonnie B. Bunning, Executive Director of Policy and Administration
Jenifer Gitchell, DNR Rules Coordinator
File 05-0197



STATE OF WASHINGTON
DEPARTMENT OF REVENUE
OFFICE OF THE DIRECTOR

P.O. Box 47454 • Olympia, Washington 98504-7454 • (360) 753-5574 • FAX (360) 586-5543

November 14, 2005

TO: Jodi Hooper
Governor's Executive Policy Office

FROM: Cindi L.H. Yates, Director

SUBJECT: REPORT ON IMPACTS OF ESHB 1010 – SIGNIFICANT LEGISLATIVE RULEMAKING

1. Significant Legislative Rules Adopted Since January 1, 2004

The Department of Revenue has adopted only one rule (issued twice each year) that we have considered a significant legislative rule since January 1, 2004. The rule is WAC 458-40-660 (Rule 660), Timber Excise Tax – Stumpage Value Tables, which is used by timber harvesters to calculate their timber excise tax liability. The data and calculations used have been negotiated between the timber industry and the Department. There are other ways of calculating the stumpage values and this is why the Department first designated this rule a significant legislative rule in 1996. We update the cost benefit analysis each time the rule is rewritten. There have been no compliance problems with this rule.

The Department is currently in the process of amending another rule that it has designated as a significant legislative rule. This rule is WAC 458-20-194 (Rule 194), doing business inside and outside the state. Rule 194 discusses the apportionment principles for persons engaging in activities subject to the service and other activities B&O tax (RCW 82.04.460(1)) in very general terms only, most of the Department's specific guidance on apportionment has been by published determinations from the Department's Appeals division (cited as Washington Tax Decisions or WTDs).

The Department is proposing to amend this rule to provide clear and new guidance on when and how a business should use the cost apportionment method for determining the business' Washington B&O tax liability. The Department also plans to incorporate in the rule longstanding interpretation of separate accounting and standards the Department uses to determine if the business has nexus with the state together with illustrative examples.

2. Summary of Additional Costs Associated with Rulemaking Requirements

The additional costs of preparing the information required under ESHB 1010 for Rule 660 have been minimal, principally because the Department is required to routinely revise this rule. These costs were absorbed within the normal operations of the Department.

The Department's Research Division has incurred \$26,700 in additional costs associated with preparing the information required under ESHB 1010 for significant legislative rules for Rule 194. The Interpretations and Technical Advice Unit assisted the Research Division in developing the cost benefit analysis; this accounted for an additional \$19,900 in costs for Rule 194. These costs are being absorbed within the normal operations of the Department by prioritizing this work over work the Department would otherwise be performing.

3. Description of Any Legal Actions for Failure to Comply

There have been no legal actions against the Department directly related to the use or non-use of regulations associated with significant rules since January 1, 2004.

4. Adverse Effects

The majority of the Department's rules are interpretive and the regulations associated with significant legislative rules have not had an adverse affect on our ability to fulfill our legislatively prescribed mission.

5. Rule Acceptability

We cannot categorize any increase or decrease in the acceptability of our significant legislative rules by the regulated community.

6. Stakeholder Comments

As the methodology used to determine stumpage values was negotiated with the industry and county assessors, and there have been no impacts as a result of using significant legislative rule requirements, we have no stakeholder comments for the period in question.

The Department made available a preliminary cost benefit analysis for Rule 194 on October 18, 2005. To date, we have received no stakeholder comments regarding either the cost benefit analysis or the fact that we used the significant legislative rule process for this rule.

7. Other Relevant Information

Rulemaking and the environment for rule making have substantially changed for the Department since 1995. Executive Order 97-02, in particular, has had a positive effect.

Changes that help the Department of Revenue fulfill its mission include:

- The Department's continuing efforts to make rulemaking information more accessible to the public. Examples include the use of electronic mail listservs to notify interested persons of the Department's interpretive statement and rulemaking actions, from preproposal stage to adoption, and the use of the Internet to make this information available to any person.

- The Department's emphasis on eliminating unneeded rules and interpretive statements, primarily the result from EO 97-02, and consolidating information into fewer, but more comprehensive, documents to make it easier for taxpayers and Department personnel to find relevant information.
- The filing of notices with the Code Reviser to announce the issuance or cancellation of interpretive statements provides another means of notifying the public of important information made available by the Department.

Changes that at times prove to be a barrier to Department of Revenue efficiently fulfilling its mission include:

- The standard rulemaking process is sometimes complex and can be a long process for some of the rules adopted by the Department. Because of the length of time, the Department relies on other interpretive documents to provide timely information to taxpayers and Department employees. The interpretive documents are then rolled into the revised rule.

cc: Jan Bianchi, Manager, Interpretations and Technical Advice Unit
Alan Lynn, Rules Policy Specialist



STATE OF WASHINGTON

DEPARTMENT OF SOCIAL AND HEALTH SERVICES
P.O. Box 45010, Olympia, Washington 98504-5010

November 14, 2005

TO: Victor A. Moore, Director
Office of Financial Management

FROM: Robin Arnold-Williams
Secretary

SUBJECT: **DSHS SIGNIFICANT LEGISLATIVE RULE-MAKING REPORT**

Enclosed is the Department of Social and Health Services (DSHS) report of significant legislative rules adopted pursuant to requirements of ESHB 1010 (RCW 34.05.328) for the period January 1, 2004 through November 14, 2005.

The Executive Summary describes how ESHB 1010 has impacted rule making at DSHS compared to rules where ESHB 1010 requirements do not apply. Following the summary are descriptions of the significant legislative rules adopted by DSHS programs during this period, and the significant legislative rules currently proposed but not yet adopted.

If you have questions regarding significant legislative rule making at DSHS, please contact Andy Fernando, manager of our Rules and Policies Assistance Unit, at 664-6094 or by e-mail at fernaax@dshs.wa.gov. Thank you.

Enclosure

cc: Antonio Ginatta
Liz Dunbar
Kathleen Brockman
Jim Carter
Jim Schnellman
Brian Lindgren

Department of Social and Health Services

Significant Legislative Rules Adopted Under ESHB 1010 (RCW 34.05.328) January 1, 2004 through November 14, 2005

Summary

The Department of Social and Health Services evaluates every proposed rule to determine if the requirements of ESHB 1010 - the Regulatory Reform Act of 1995 - apply. Specifically, the statute requires DSHS to consider:

- 1) If the proposed rule meets the definition of a "significant legislative rule" under RCW 34.05.328(5)(c); and
- 2) If the rule is a significant rule, is a cost-benefit analysis is required (most DSHS rules qualify for certain exemptions under RCW 34.05.328(5)(b)).

Where the requirements apply, the Department fulfills the ESHB 1010 criteria by preparing analyses describing the anticipated costs and benefits of the rules, determining whether adopting rules is the least burdensome alternative for those required to comply, and completing other related documentation required by the statute or DSHS policy and practice.

In response to information requested by the Office of Financial Management regarding DSHS implementation of ESHB 1010 during this period:

1. List the rules adopted by DSHS under significant legislative rule requirements in RCW 34.05.328 since January 1, 2004, and how compliance with these requirements affected the substance of the rules as finally adopted.

From January 1, 2004 through November 14, 2005, DSHS:

- Adopted 39 rules and recently proposed five rules affecting 1,096 WAC sections to which the requirements of ESHB 1010 applied. This represents approximately 19 percent of the DSHS rules adopted in the period (the ratio is consistent with previous years);
- Repealed or will be repealing 205 WAC sections in these permanent and proposed rules; and
- Spent 12.1 months on average to complete the adoption of a significant legislative rule (the range was 4 months to 49 months), from the filing of the initial pre-proposal rule-making notice to the final rule adoption.

Following this narrative is a *Summary Table* listing the significant legislative rules adopted or recently proposed by DSHS during this period. The table shows the time required to complete each rule adoption, and includes links to the final or proposed rule notice for each rule. *Appendix A* following the Summary Table includes detailed program-by-program descriptions of the significant legislative rules adopted or recently proposed, and how implementing ESHB 1010 has impacted each program.

Department programs generally report that meeting ESHB 1010 requirements has not affected the substance of the adopted or proposed rules.

2. A summary of additional costs associated with the more intensive rule-making requirements for significant legislative rules.

The Department has not calculated the fiscal costs of complying with ESHB 1010 requirements. Anecdotal reports from DSHS programs indicate that the staff time spent preparing, copying and disseminating cost-benefit analyses and related documents required by the statute has resulted in greater rule-making costs than would occur without ESHB 1010.

Otherwise, the rule-making steps undertaken by DSHS programs - and presumably the costs to complete those steps - are substantially the same whether or not ESHB 1010 requirements apply. Affected citizens, businesses and local governments are offered the same opportunities to participate in the rule-making process regardless of whether the rules are significant legislative rules.

3. A description of legal actions against DSHS for failure to comply with RCW 34.05.328, costs of such actions and the status or outcome of the action.

There was one legal action resolved in 2004 challenging significant legislative rules adopted by DSHS in 2003 regarding licensed board homes in chapter 388-78A WAC. The lawsuit (Thurston County Superior Court case number 03-0201739-3), was filed by the "Assisted Living Legal Defense Fund" challenging both the content of the 2003 boarding home rules and the Department's process to adopt the rules. (For the proposed 2003 rules, the Department's Residential Care Services (RCS) Division had applied ESHB 1010 requirements by preparing a cost-benefit analysis under RCW 34.05.328. RCS also had prepared a small business economic impact statement under chapter 19.85 RCW, the Regulatory Fairness Act.)

In part to answer issues raised by the boarding home industry and to implement two 2004 Session Laws, the Department decided to:

- Repeal all of the 2003 boarding home licensing rules that were the subject of the lawsuit, and

- Propose and adopt new replacement rules in chapter 388-78A WAC.

Before proposing the replacement rules, the Department hired Western Health Care Corporation of Boise, Idaho to review the draft replacement rules and develop an assessment of the implementation costs to boarding home operators. Western Health Care's assessment was used to prepare a cost-benefit analysis and a small business economic impact statement for the replacement rules.

RCS staff sought feedback on the draft replacement rules and economic analyses from representatives of three boarding home trade associations (Northwest Assisted Living Facilities Association, Washington Association of Housing and Services for the Aging, and Washington Center for Assisted Living /Washington Health Care Association), the Long Term Care Ombudsman and the Resident Councils of Washington. The Department considered the feedback provided, and made appropriate changes to the draft rules, cost-benefit analysis and small business economic impact statement.

The replacement boarding home licensing rules were formally proposed on May 19, 2004. Following the public comment period, the final replacement boarding home licensing rules, and the repeal of the rules adopted in 2003, were adopted on July 30, 2004.

On August 2, 2004, the Assisted Living Legal Defense Fund lawsuit was withdrawn and the case formally dismissed.

4. The extent to which significant legislative rulemaking requirements have adversely affected the capacity of DSHS to fulfill its legislatively prescribed mission.

Fulfilling ESHB 1010 requirements has not affected the Department's mission to improve the quality of life of individuals and families in need. Two Administrations, Economic Services and Aging and Disability Services, expressed concern that the time to complete requirements of the statute may delay the implementation of some rules that the Department believes would improve the quality of life for children, vulnerable seniors, and persons with disabilities.

5. Descriptions of any measurable increase or decrease in the acceptability by the regulated community of rules adopted under ESHB 1010 requirements.

Notwithstanding the lawsuit regarding the Department's boarding home licensing rules described in 3. above, public acceptance of DSHS rules appears to be the same regardless if the rules are significant legislative rules or not. The Children's Administration reported increased participation in the development of its rules, whether or not ESHB 1010 requirements apply. Children's typically takes one to four years to adopt a rule. This timeframe allows Children's to gather extensive stakeholder

feedback on rule drafts and anticipated costs, and to achieve consensus before formally proposing its rules.

Other DSHS Administrations report that stakeholders are as likely to participate in rule development, attend a public hearing, or send written comments on proposed rules that meet the ESHB 1010 criteria as those that do not. Stakeholders rarely request copies of cost-benefit analyses or comment on them.

6. Any comments received from counties, cities, businesses, labor, environmental organizations, or any other stakeholders on the impacts of significant legislative rule-making requirements.

The Department has not received comments from organizations or local governments on the impact of implementing the requirements of ESHB 1010.

7. Other relevant information, such as how rule-making has changed in DSHS since the passage of ESHB 1010 in 1995, and whether the significant legislative rule requirements have helped or hindered in fulfilling DSHS' mission.

The Department's rule-making procedures have changed. But we believe this change is due more to other regulatory efforts – implementation of the 1997 Governor's Executive Order 97-02 on Regulatory Improvement, adherence to internal DSHS rule-making policies and practice, and extensive training for staff – have influenced Department rule-making to a greater degree than has the implementation of ESHB 1010.

To meet the requirements of ESHB 1010, the department has increased training for rule writers and program managers regarding: understanding the requirements of the statute; learning how to determine if each rule meets the definition of "significant" under the statute; and completing cost-benefit analyses and related documentation. But in balance, ESHB 1010 has not affected the department's ability to fulfill its statutory mission.

At DSHS, the development of a rule typically involves public meetings, work groups, surveys, and other forms of consultation with the consumers, advocacy groups, regulated businesses, and local governments in the drafting stages prior to filing formal proposed rules. In some cases, Department consultation with stakeholders begins before the initial rule-making notice is filed, and continues after the permanent adoption to assure that DSHS rules are effective and appropriate.

Consumers affected by DSHS rules have generally been supportive of the department's rule-making process, even in cases where they have disagreed with the content of the rules. Public participation has made consumers more knowledgeable about how DSHS applies the rule-making process under the Administrative Procedure Act, and DSHS'

customers have shown increased desire to take part in that process. However, we believe this heightened participation is due to the manner in which Department staff have implemented regulatory improvement efforts for all DSHS rules more so than the impact of ESHB 1010 alone.

Summary Table
DSHS Administrations and Divisions
Significant Legislative Rules Adopted or Proposal Pending

The following Summary Table list the significant legislative rules adopted or recently proposed during this period. The following DSHS programs adopted rules during this reporting period for which the requirements of ESHB 1010 applied:

- Aging and Disability Services Administration (ADSA) –Developmental Disabilities, Home and Community Services and Residential Care Services divisions;
- Children's Administration (CA) – Program and Policy Division
- Economic Services Administration (ESA) – Child Care and Early Learning, and Employment and Assistance Programs divisions; and
- Health and Recovery Services Administration (HRSA) – Medical Assistance.

Summary Table: DSHS Significant Rules Adopted under ESHB 1010, Jan. 1, 2004 to Nov. 14, 2005

DSHS Admin.	Division	Rule (WAC) Chapter	WAC Title or Subject	Months to Complete Final Rule Adoption	Date Rule Adopted or Proposed	Link to St. Register (WSR) Notice Filing
ADSA	Home & Community Services	388-71	Home and community programs - provider qualifications	4.5	12-24-03*	04-02-001
ADSA	Home & Community Services	388-71	Home and community programs, - provider work hours allowed	6	1-29-04	04-04-042
ADSA	Home & Community Services	388-71 388-106	Home and community programs; Long-term care - private duty nursing (Proposed rule; public hearing 10-25-05)	5 (to date)	Proposed 9-20-05	05-19-127
ADSA	Home & Community Services	388-71 388-106 388-110	Home and community programs; Long-term care; and Contracted residential care services (Proposed rule, public hearing 1-10-06)	4.5 (to date)	Proposed 11-8-05	05-23-029 (link not available yet)
ADSA	Residential Care Services	388-78A	Boarding home licensing -- replacing rules adopted in 2003	6	7-30-04	04-16-065
ADSA	Residential Care Services	388-110	Contracted residential care services -- conforming rules to chap. 388-78A WAC	20	7-30-04	04-16-063 , 04-18-001
ADSA	Residential Care Services	388-78A	Boarding home licensing (Proposed rule, public hearing 12-6-05)	7 (to date)	Proposed 10-4-05	05-20-079
ADSA	Developmental Disabilities	388-820	Community residential services and supports - training standards	13	1-29-04	04-04-043
ADSA	Developmental Disabilities	388-825 388-850	Developmental disabilities services rules; County plan for developmental disabilities	6	5-9-04	05-11-015
ADSA	Developmental Disabilities	388-825	Developmental disabilities services rules -- implementing new waiver services	23	8-19-05	05-17-135
ADSA	Developmental Disabilities	388-824	Developmental disabilities mini-assessment (New chapter)	18	11-8-05	05-23-030
ADSA	Developmental Disabilities	388-845	Home and community based waiver services (New chapter. Proposed rule; public hearing 10-11-05)	26 (to date)	Proposed 8-9-05	05-17-055
CA	Program and Policy	388-145	Licensing requirements for foster homes, staffed residential homes, group care facilities and child placing agencies	25	4-5-04	04-08-073
CA	Program and Policy	388-147	Licensing requirements for pregnant and parenting teen programs and facilities	49	12-9-04	05-01-075
CA	Program and Policy	388-145	Licensing requirements for emergency respite centers (crisis nurseries)	8	5-4-05	05-11-008
CA	Program and Policy	388-160	Licensing requirements for overnight youth shelters	10	6-22-05	05-14-013
ESA	Child Care & Early Learning	388-296	Family home child care business regulations (Chapter moved from 388-155 WAC)	23	8-31-04	04-18-082
ESA	Child Care & Early Learning	388-290	Working Connections Child Care -- subsidy payment rates and procedures	15	9-30-05	05-20-051
ESA	Employment & Assistance Programs	388-273	Washington Telephone Assistance Program -- setting provider payment rates	13	7-23-04	04-13-136
ESA	Employment & Assistance Programs	388-310	WorkFirst -- adding new job search options	6	9-2-05	05-16-107
HRSA	Medical Assistance	388-530	Pharmacy services -- new reimbursement methodology	7	12-16-03*	04-01-089

* Indicates final rule filed in 2003 but published and effective in 2004

Summary Table: DSHS Significant Rules Adopted under ESHB 1010, Jan. 1, 2004 to Nov. 14, 2005
(continued)

DSHS Admin.	Division	Rule (WAC) Chapter	WAC Title or Subject	Months from Start to Final Rule Adoption	Date Rule Adopted or Proposed	Link to St. Register (WSR) Notice Filing
HRSA	Medical Assistance	388-501	Patient requiring regulation – client potentially misusing services	12	12-16-03*	04-01-099
HRSA	Medical Assistance	388-532	Family planning services	22	2-6-04	04-05-011
HRSA	Medical Assistance	388-527	Services subject to estate recovery	28	4-30-04	04-10-060
HRSA	Medical Assistance	388-553	Home infusion therapy - parenteral nutrition	12	5-4-04	04-11-007
HRSA	Medical Assistance	388-533	Chemical using pregnant women – substance abuse services	12	5-4-04	04-11-008
HRSA	Medical Assistance	388-550	Hospital services – disproportionate share hospital service reimbursement	4.5	5-28-04	04-12-044
HRSA	Medical Assistance	388-533	Maternity related services – maternity, infant case management	11	6-10-04	04-13-049
HRSA	Medical Assistance	388-546	Medical transportation services	7	8-17-04	04-17-118
HRSA	Medical Assistance	388-550	Hospital services – outpatient prospective payment system. New payment method	4.5	10-1-04	04-20-061 , 04-20-060
HRSA	Medical Assistance	388-550	Hospital services – outpatient "short-stay" and inpatient admission policy	4.5	10-1-04	04-20-057 , 04-20-058 , 04-20-059
HRSA	Medical Assistance	388-535A	Orthodontic services – expedited prior authorization, provider requirements	14	12-8-04	05-01-064
HRSA	Medical Assistance	388-538	Managed care – enrollment process, Wash. Medicaid integration partnership	5.5	12-8-04	05-01-066
HRSA	Medical Assistance	388-530	Pharmacy services – evidence-based prescription drug program	8.5	12-30-04	05-02-044
HRSA	Medical Assistance	388-554	Enteral nutrition program	17	1-28-05	05-04-059
HRSA	Medical Assistance	388-533	Chemical using pregnant women program – removing barriers to service in rules	5	3-31-05	05-08-061
HRSA	Medical Assistance	388-531	Physician related services – standards for covered gastric bypass surgery	11.5	5-20-05	05-12-022
HRSA	Medical Assistance	388-550	Hospital services – adopting full-cost public hospital payment system	4.5	6-1-05	05-12-132
HRSA	Medical Assistance	388-544	Vision care services – program eligibility and limits, scope of coverage	15	6-6-05	05-13-038
HRSA	Medical Assistance	388-551	Alternatives to hospital services – hospice program and pediatric palliative care	17	8-30-05	05-18-033
HRSA	Medical Assistance	388-531	Physician related services – increased payments for qualified trauma care	4.5	9-30-05	05-20-050
HRSA	Medical Assistance	388-532	Family planning services – revising program services and limits (Proposed rule, public hearing 8-23-05)	16 (to date)	Proposed 7-1-05	05-14-123
HRSA	Medical Assistance	388-543	Durable medical equipment and related services –covered incontinence supplies	5	10-18-05	05-21-102
HRSA	Medical Assistance	388-501	Scope of services – evidenced based determinations for medical services	16	11-8-05	05-23-031
HRSA	Medical Assistance	388-538	Managed Care – (Proposed rule; public hearing scheduled for 12-27-05)	10 (to date)	Proposed 11-8-05	05-23-029

Appendix A

Detailed Descriptions Of Significant Legislative Rules Adopted or Recently Proposed by DSHS Administrations and Divisions

January 1, 2004 through November 14, 2005

Department of Social and Health Services
Aging and Disability Services Administration
Home and Community Services

Significant Legislative Rules Adopted
January 1, 2004 through November 4, 2005
(Includes recently proposed rules)

1. General questions:

- a. How has rule-making changed for ASDA Home and Community Services since the adoption of the Significant Legislative Rule statute, RCW 34.05.328, in 1995?

Answer: The rule-making process is more time-consuming due to the additional requirements.

- b. What additional costs has your Program experienced related with the more intensive rule-making requirements of RCW 34.05.328?

Answer: Additional staff time is needed to prepare the cost-benefit analysis, rule implementation plan, and significant rule analysis.

- c. Have the significant legislative rule-making requirements adversely affected your Program's ability to fulfill DSHS' mission, and how?

Answer: No.

- d. Has there been any measurable increase or decrease in how the regulated community accepts your Program's rules adopted under RCW 34.05.328?

Answer: No.

2. Significant Legislative Rules adopted by ASDA-HCS during this period:

<p>Subject Matter: WAC 388-71-05640 through 388-71-05952 <i>Individual Provider and Home Care Agency Provider Qualifications</i>. The department incorporated nurse delegation core training in in-home care settings as required by chapter 140, Laws of 2003. Existing rules were reorganized for clarity and to allow for future revisions. Adopted December 24, 2003 as WSR <u>04-02-001</u> Months to complete this rule-making: 4.5 months.</p>
<p>Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action: None.</p>
<p>Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule: HCS followed standard procedures for involving stakeholders in the development of these rules:</p> <ul style="list-style-type: none">• File CR-101 and send to mailing list to establish a contact list of interested stakeholders.• Send draft language to interested stakeholders for review and comment.• File CR-102 and send to all mailing lists.• Public hearing for testimony.• Prepare a Concise Explanatory Statement and send to all who provide comments.• File CR-103 and send to all mailing lists. <p>HCS did not receive any comments from stakeholders related to the impact of this rule.</p>

<p>Subject Matter: Amending WAC 388-71-0202 <i>Long-term care services – Definitions</i> and adopting new WAC 388-71-0531 <i>How many hours can my individual provider, agency provider, or personal aide work if I am receiving COPES, Medicaid Personal Care, or Chore services?</i> The rule established and clarified:</p> <ul style="list-style-type: none"> • The maximum number of hours an individual provider or personal aide can be paid for one client that receives COPES, Medicaid Personal Care, or Chore services in their home; • The maximum number of hours an individual provider or personal aide can be paid when this individual provider or personal aide is a parent, step-parent, or adoptive parent and lives in the same household as the client; and • Definition language. <p>Adopted January 29, 2004 as WSR <u>04-04-042</u></p> <p>Months to complete this rule-making: 6 months</p>
<p>Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:</p> <p>None.</p>
<p>Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule:</p> <p>HCS followed the standard procedures for involving stakeholders in the development of this rule. However, stakeholders were negatively impacted by the outcomes of the rule, and requested legislation that eliminated the department's authority to determine hours for individual providers. After legislation was enacted as chap. 3, Laws of 2004, the department filed an emergency CR-103 to repeal WAC 388-71-0531, effective March 11, 2004. The permanent repeal became effective August 7, 2004.</p>

<p>Subject Matter: Adopting new WAC 388-106-1000 through 388-106-1055, <i>Private Duty Nursing</i>; and repealing WAC 388-71-0900 through 388-71-0965, <i>Private Duty Nursing</i>. Revised rules are necessary to clarify the definitions for nursing services, to define the scope of services to be authorized, to describe the necessity for documentation to support the required services, and to relocate these sections into the new chapter 388-106 WAC Long-term care services.</p> <p>Not yet adopted, proposed as WSR <u>05-19-127</u> on Sept. 20, 2005; <u>hearing</u> was held on October 25, 2005.</p> <p>Months to complete this rule-making: 5 months to-date</p>
<p>Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:</p> <p>None.</p>
<p>Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule:</p> <ul style="list-style-type: none"> • The CR-101 was filed and sent to the Home and Community Services mailing list (approximately 1600 individuals/businesses), to compile a list of interested stakeholders. • Draft rules were sent to interested stakeholders for review and comments, which were taken into consideration by the program. • A meeting took place to address concerns by stakeholders, and language was amended further. • A public hearing took place on October 25, 2005. Amendments to language were read into the record. Stakeholder testimony indicated that amendments were agreeable.

<p>Subject Matter: Chapters: 388-71 WAC Home and community services and programs; 388-106 WAC Long-term care services; and 388-110 WAC Contracted residential care services. The rule-making clarifies the intent of policies from the recent adoption of new Chapter 388-106 WAC, and revise the following subject matter: Scope and definitions, Applying for Services; Comprehensive Assessment Reporting Evaluation (CARE) Assessment; CARE Classification; Medicaid Personal Care; Community Options Program Entry System (COPES); Medically Needy Residential Waiver; Medically Needy In-Home Waiver; PACE; Adult Day Services; Client Rights; Definitions; Assisted living service standards; Enhanced Adult Residential Care standards, Adult residential care service standards; and the Washington Medicaid Integration Program.</p> <p>Not yet adopted. Proposed rules filed November 8, 2005 as WSR 05-23-029. Hearing scheduled for January 10, 2006</p> <p>Months to complete this rule-making: 4.5 months to-date</p>
<p>Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:</p> <p>None.</p>
<p>Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule:</p> <ul style="list-style-type: none"> • The CR-101 was filed and sent to the Home and Community Services mailing list (approximately 1600 individuals/businesses), to compile a list of interested stakeholders. • Draft rules were sent to interested stakeholders for review and comments, which were taken into consideration by the program in preparing the proposed rule filing.

Department of Social and Health Services
Aging and Disability Services Administration
Residential Care Services

Significant Legislative Rules Adopted
January 1, 2004 through November 4, 2005
(Includes recently proposed rules)

1. General questions:

- a. How has rule-making changed for ADSA-Residential Care Services since the adoption of the Significant Legislative Rule statute, RCW 34.05.328, in 1995?

Answer: The rule-making process has become lengthier and more detailed and thus, at times has delayed the implementation date.

- b. What additional costs has your Program experienced related with the more intensive rule-making requirements of RCW 34.05.328?

Answer: We have experienced an increase in the costs of copying and mailing notices to interested stakeholders and parties. Also, we have seen an increase in staff time and resources to complete all the necessary paperwork such as the cost benefit analysis under ESHB 1010 and small business economic impact statement under chap. 19.85 RCW.

- c. Have the significant legislative rule-making requirements adversely affected your Program's ability to fulfill DSHS' mission, and how?

Answer: The significant legislative rule-making requirements have at times impeded the Department's ability to write and/or delayed the implementation of rules that would improve the quality of life for residents in our long term care settings. Stakeholders with varying interests have used the opportunity for feedback as a way to challenge the Department's rule-making process.

- d. Has there been any measurable increase or decrease in how the regulated community accepts your Program's rules adopted under RCW 34.05.328?

Answer: We have seen an increase in challenges by the regulated community on our program rules.

2. Significant Legislative Rules adopted by ADSA-RCS during this period:

(Continued on following page)

Subject Matter:

Chapter 388-78A WAC – Boarding Home Licensing Rules. Boarding home licensing rules were revised to assure that chapter 388-78A WAC complies with chapter 18.20 RCW as amended by SSB 6225, 6160 and 5733 adopted by the 2004 legislature, and to be responsive to the needs of department clients. All new rules in this chapter were adopted and replaced all boarding home licensing rules in chap. 388-78A adopted in 2003.

Adopted July 30, 2004 as WSR 04-16-065

Months to complete this rule-making: 6 months.

Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:

A suit was filed by the "Assisted Living Legal Defense Fund" challenging both the content of the 2003 boarding home rules and the rule-making process under Thurston County Superior Court case number 03-0201739-3. However, the process of adopting the 2004 boarding home rules resulted in the withdrawal of the suit.

Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule:

The department drafted amendments, provided a copy, and requested feedback from representatives of three boarding home trade associations (Northwest Assisted Living Facilities Association, Washington Association of Housing and Services for the Aging, and Washington Center for Assisted Living /Washington Health Care Association), the Long Term Care Ombudsman and the Resident Councils of Washington. The department considered the feedback provided, made appropriate changes to the draft, and proposed an amended chapter 388-78A WAC. In addition, the department hired Western Health Care Corporation of Boise, Idaho to review the draft rules and develop an assessment of the costs of implementing the revised rules. The department then distributed Western Health Care Corporation's cost analysis to the three boarding home trade associations (listed above), the Long term Care Ombudsman, the Resident Councils of Washington and select boarding home operators. These stakeholders and select legislative members and staff were invited to a committee meeting held on May 6, 2004 to review this analysis and provide additional information in response to it.

Subject Matter:

Revised chapter 388-110 WAC, Contracted residential care services, to incorporate into administrative rules the dementia care pilot project standards for contracting with boarding homes to provide specialized dementia care to department clients and to:

- Make revisions consistent with, and not duplicate, 2004 amendments to chapter 388-78A WAC, Boarding home licensing rules; and
- Update the rules to comply with Executive Order 97-02 on regulatory improvement.

Adopted July 30, 2004 as WSR 04-16-063 and 04-18-001

Months to complete this rule-making: 20 months

Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:

None.

Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule:

The department held a public meeting on February 26, 2003 to solicit ideas regarding possible amendments. Using the information and ideas presented, the department drafted amendments and held two follow up meetings for stakeholders on May 28 and June 11, 2003 to discuss the draft and possible additional changes. The department distributed the draft amendments and solicited comments from a workgroup consisting of variety of stakeholders, including service providers and their representative associations. There has been no challenge of these rules.

Subject Matter:

The department is proposing to amend sections in Chapter 388-78A WAC - Boarding Home Licensing Rules. The amendments to WAC 388-78A:

- Make the rule clearer;
- Eliminate redundancies and inconsistencies with other rules and statutes;
- Expand options for boarding homes to provide adult day services and thereby create more options for consumers;
- Respond in part to chapter 505, Laws 2005, and
- Create more training options for boarding home administrators.

Not yet adopted, proposed as WSR 05-20-079 on 10/4/2005; public hearing scheduled for Dec. 6, 2005.

Months to complete this rule-making: 7 months to-date

Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:

None

Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule:

The department held a public meeting on June 14, 2005 to obtain input regarding the issues associated with possible amendments to WAC 388-78A. The department also met with the Boarding Home Advisory Board on September 1, 2005 and shared a draft of the proposed amendments and solicited their comments as well as from their constituents. The department also met with additional stakeholders on September 14, 2005 to discuss the draft and solicit comments and feedback before filing the proposed rules. We are still in the process of accepting additional comments.

Department of Social and Health Services

Aging and Disability Services Administration
Division of Developmental Disabilities

Significant Legislative Rules Adopted
January 1, 2004 through November 4, 2005
(Includes recently proposed rules)

1. General questions:

- a. How has rule-making changed for ADSA-Division of Developmental Disabilities since the adoption of the Significant Legislative Rule statute, RCW 34.05.328, in 1995?

Answer: DDD client representatives, staff who work with clients and the supervisors who supervise the staff are now able to find answers to their questions in the WAC. They place a greater reliance on their ability to secure information independently than when they only had the manuals and program manager on which to rely.

- b. What additional costs has your Program experienced related with the more intensive rule-making requirements of RCW 34.05.328?

Answer: There have been no additional costs related to rule requirements.

- c. Have the significant legislative rule-making requirements adversely affected your Program's ability to fulfill DSHS' mission, and how?

Answer: No

- d. Has there been any measurable increase or decrease in how the regulated community accepts your Program's rules adopted under RCW 34.05.328?

Answer: There is a "cap" on DDD program entry currently. No new individuals are allowed to enter the program. Due to DDD's stakeholder process, the regulated community now more readily accepts the rules surrounding entry and exit criteria. Measurable evidence, if any, will be monitored by the Program Manager.

2. Significant Legislative Rules adopted by ADSA-DDD during this period:

(Continued on following page)

<p>Subject Matter: Amended rules in chapter 388-820 WAC (now chapter 388-101 WAC) to specify health and safety standards that service providers must meet to support clients in mental health crisis diversion services. The rules also specified training requirements for staff working with clients in these settings and administrative responsibilities of the contractor. The standards ensure provision of supports to client in DDD-contracted mental health crisis diversion services that are consistent with the division's philosophy of community supports and establish standards for monitoring these services. The standard added regarding safety features also clarified requirements for providers regarding the health and safety of clients receiving community residential services and support services.</p> <p>Adopted January 29, 2004 as WSR <u>04-04-043</u></p> <p>Months to complete this rule-making: 13 months.</p>
<p>Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:</p> <p>None.</p>
<p>Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule:</p> <p>Comments were very positive from stakeholders. In addition to the proposed rule-making notice, copies of drafts were sent separately to DDD stakeholders.</p>
<p>Subject Matter: Chapter 388-825 WAC, <i>Division of Developmental Disabilities services rules</i> and chapter 388-850 WAC, <i>County plan for developmental disabilities</i>. The rules eliminated the direct payment to recipients for employment and day program services, and returned the funding for administering these programs to the counties.</p> <p>Adopted May 9, 2005 as WSR <u>05-11-015</u></p> <p>Months to complete this rule-making: 6 months</p>
<p>Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:</p> <p>None.</p>
<p>Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule:</p> <p>Some stakeholders raised concerns regarding the proposed rule. In addition to the formal proposed rule, copies of drafts were sent separately to DDD Stakeholders.</p>
<p>Subject Matter: Adoption of new, amended and repealed rules in chapter 388-825 WAC, <i>Division of Developmental Disabilities Service rules</i>. The Division of Developmental Disabilities received approval from the federal Centers for Medicare and Medicaid Services (CMS) to implement four home and community based service (HCBS) waivers, which replaced the community alternatives program (CAP) waiver. These related rules revised provider qualifications and clarified client appeal rights</p> <p>Adopted August 19, 2005 as WSR <u>05-17-135</u></p> <p>Months to complete this rule-making: 23 months</p>
<p>Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:</p> <p>None.</p>
<p>Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule:</p> <p>Some issues were raised by stakeholders regarding the proposed rule. In addition to the proposed rule notice, copies of drafts were sent separately to DDD Stakeholders.</p>

Subject Matter:

Adopting new chapter 388-824 WAC, *Division of developmental disabilities (DDD) mini-assessment process*. These proposed rules govern and support the implementation and use of the mini-assessment by the Division of Developmental Disabilities. Adoption of these rules will help promote consistent application and understanding of the mini-assessment. This new chapter:

- Describes who receives a mini-assessment and its purpose;
- Defines "level of need" groups; and
- Identifies how clients are referred to receive a full assessment.

As a result of the original public hearing on June 7, 2005, the department made revisions to the rules proposed on April 19, 2005 as WSR 05-09-084 to address some of the concerns that were raised, in an effort to provide more clarity in chapter 388-824 WAC.

Adopted November 8, 2005 as WSR 05-23-030

Months to complete this rule-making: 18 months

Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:

None.

Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule:

There were concerns raised in the stakeholder comments. The proposed rule was changed to reflect stakeholders comments where possible, and was re-proposed under a supplemental notice. Comments on the supplemental rule were positive.

Subject Matter:

New chapter 388-845 WAC, *DDD home and community based services waiver*, WAC 388-845-0001 through 388-845-4015. The Division of Developmental Disabilities has received initial approval from the federal Centers for Medicare and Medicaid Services (CMS) to implement four home and community based service (HCBS) waivers, which replaced the community alternatives program (CAP) waiver. These proposed rules will clarify eligibility, service array, utilization, provider qualifications, client appeal rights and access to services.

Not yet adopted; proposed as WSR 05-17-055; hearing was held on October 11, 2005

Months to complete this rule-making: 26 months to-date

Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:

None.

Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule:

Stakeholders comments on the proposed rules were generally positive, although some concerns were raised. In addition to mailing the formal proposed rules, copies of drafts were sent separately to DDD Stakeholders.

Department of Social and Health Services

Children's Administration

**Significant Legislative Rules Adopted
January 1, 2004 through November 4, 2005**

1. General questions:

- a. How has rule-making changed for Children's Administration since the adoption of the Significant Legislative Rule statute, RCW 34.05.328, in 1995?

Answer: Children's Administration engages regulated entities in the rule making process. Since 1995, our stakeholders have become more knowledgeable and consistently involved in the process. The stakeholders have much higher expectations of the Administration in terms of their involvement and input in the outcomes as well as the process of rule making.

- b. What additional costs has your Program experienced related with the more intensive rule-making requirements of RCW 34.05.328?

Answer: There has been some addition time required in meeting with stakeholders. This has added to the travel expenses and employee time in some cases.

- c. Have the significant legislative rule-making requirements adversely affected your Program's ability to fulfill DSHS' mission, and how?

Answer: The significant legislative rule-making requirements have not adversely affected Children's Administrations ability to fulfill the mission of the Department.

- d. Has there been any measurable increase or decrease in how the regulated community accepts your Program's rules adopted under RCW 34.05.328?

Answer: Since 1995, the increase in the involvement of the regulated community in the process has increased their understanding of the rule-making process, of legislative mandates of the Administration, programmatic reasons for proposed changes to rules. Children's Administration has also experiences an increase in participation of stakeholders in the process of adopting significant and "non-significant" rules.

2. Significant Legislative Rules adopted by Children's Administration during this period:

(Continued on following page)

<p>Subject Matter: Chapter 388-148 WAC <i>Licensing Requirements for Foster Homes, Staffed Residential Homes, Group Care Facilities, and Child-Placing Agencies</i>. The amendments and additions to chapter 388-148 WAC clarified and added flexibility to the licensing requirements for homes, facilities, and child-placing agencies licensed by Children's Administration, including licensing requirements for a new type of facility - Group receiving centers. The changes improve Children's Administration's ability to claim federal funding under the Social Security Act and enhance health and safety for children and youth.</p> <p>Adopted April 5, 2004 as WSR <u>04-08-073</u></p> <p>Months to complete this rule-making: 25 months.</p>
<p>Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:</p> <p>None.</p>
<p>Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule:</p> <p>The majority of comments received by stakeholders were incorporated into the language of the chapter prior to the proposed rules. There were approximately one half dozen comments that suggested including text in the rules that were determined to be either outside the parameter of the licensing authority or were related to social work practice not licensing standards. No comments were received on the rule-making process</p>

<p>Subject Matter: Adoption of new chapter 388-147 WAC, <i>Licensing requirements for pregnant and parenting teen programs and facilities</i> set appropriate minimum licensing requirements for independent living facilities where teen families live in apartment-like settings. The WAC requirements appropriately fit this type of independent-living group residential care, while providing safe comfortable housing, basic case management services, and independent-living skills development.</p> <p>Adopted December 9, 2004 as WSR <u>05-01-075</u></p> <p>Months to complete this rule-making: 49 months</p>
<p>Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:</p> <p>None.</p>
<p>Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule:</p> <p>During the rule drafting process, there was a great deal of debate of regulatory issues among stakeholders, as the group is divided between licensees that have this program as their only client centered program and those that offer teen residential programs as just one of a number of programs. The rule-making process offered the Administration's providers a forum and opportunity for much needed discussions between providers on issues related to the operation of their individual programs.</p>

<p>Subject Matter: WAC 388-145-0100 <i>What personal characteristics must I have to provide care to children at a center?</i> and 388-145-0230 <i>When is a license denied, suspended or revoked?</i> The amendments to chapter 388-145 WAC, <i>Licensing requirements for emergency respite centers (aka: Crisis nurseries)</i> were to provide rule clarity and consistency with licensing rule chapters for other residential facilities licensed by Children's Administration.</p> <p>Adopted May 4, 2005 as WSR <u>05-11-008</u></p> <p>Months to complete this rule-making: 8 months</p>
<p>Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:</p> <p>None.</p>
<p>Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule:</p> <p>No comments were received. The four licensees were in agreement with the proposed and adopted changes.</p>

<p>Subject Matter: Amending WAC 388-160-0075 <i>What qualifications do I need to care for youth at an overnight youth shelter?</i>, and 388-160-0195 <i>When must the department deny, suspend or revoke a license?</i> Amendments to WAC 388-160-0075 made the chapter consistent with the licensing requirements of other chapters governing Children's Administration's licensed residential facilities. The changes further increased the safety protections around child abuse or neglect history of applicants and staff of an overnight youth shelter. Changes to WAC 388-160-0195 clarified the meaning of the word "disqualify" by replacing with the words that are the intent of this section, which are "deny, suspend, or revoke."</p> <p>Adopted June 22, 2005 as WSR <u>05-14-013</u></p> <p>Months to complete this rule-making: 10 months</p>
<p>Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:</p> <p>None.</p>
<p>Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule:</p> <p>Only one comment was received. The sole licensee asked for clarification and assurance that the change in rule would not significantly increase the licensing or approval process.</p>

Department of Social and Health Services

Economic Services Administration
Division of Child Care and Early Learning

Significant Legislative Rules Adopted
January 1, 2004 through November 4, 2005

1. General questions:

- a. How has rule-making changed for ESA-Division of Child Care and Early Learning since the adoption of the Significant Legislative Rule statute, RCW 34.05.328, in 1995?

Answer: The significant rule statute does not apply to the majority of our WAC, as most DCCEL rules concern eligibility for benefits to families that are exempt from ESHB 1010 requirements under RCW 34.05.328(5)(b)(vii). However, DCCEL did apply ESHB 1010 requirements by preparing cost-benefit analyses for two rules adopted during this period:

- o Working Connections Child Care provider subsidy rate changes in chapter 388-290 WAC; and
- o Family Home Child Care Business Regulations in new chapter 388-296 WAC (previously chapter 388-155 WAC).

- b. What additional costs has your Program experienced related with the more intensive rule-making requirements of RCW 34.05.328?

Answer: None.

- c. Have the significant legislative rule-making requirements adversely affected your Program's ability to fulfill DSHS' mission, and how?

Answer: Not up to this point. The one concern we have is the possible future need to decrease the amount we can spend on the program due to budget constraints. If such changes are deemed to be a significant impact, we could be limited in our ability to make the changes in rules in order to operate within budget.

- d. Has there been any measurable increase or decrease in how the regulated community accepts your Program's rules adopted under RCW 34.05.328?

Answer: None.

2. Significant Legislative Rules adopted by ESA-DCCEL during this period:

(Continued on following page)

<p>Subject Matter: Adoption of new chapter 388-296 WAC, Child care business regulations for family home child care and repeal of corresponding sections of chapter 388-155 WAC. The adopted rules clarified existing rules on home child care licensed by the Department, including minimum standards, licensing requirements, responsibilities of licensed homes, and the health aspect of child care.</p> <p>Adopted August 31, 2004 as WSR <u>04-18-082</u></p> <p>Months to complete this rule-making: 23 months</p>
<p>Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:</p> <p>None.</p>
<p>Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule:</p> <p>Stakeholders raised concerns throughout the development of the permanent rules. To the extent possible, DCCEL accommodated these concerns in revisions to the proposed rules. Providers did file rule-making petitions (under RCW 34.05.330) based on some changes they would like to see, and DCCEL has answered the petitions and is preparing to file a pre-proposal notice (CR-101) to begin addressing those proposed changes by revising the rules.</p>

<p>Subject Matter: Chapter 388-290 WAC, Working connections child care. Amended WAC 388-290-0180, 388-290-0190, 388-290-0200, and 388-290-0205; and repealing WAC 388-290-0250. The department revised the rules to change reimbursements paid to licensed providers providing child care for eligible assistance clients. The rules:</p> <ul style="list-style-type: none"> • Increased reimbursement rates for licensed/certified providers and DSHS contracted Seasonal Day Camps • Repealed the payment of the Infant Bonus. <p>Adopted September 30, 2005 as WSR <u>05-20-051</u></p> <p>Months to complete this rule-making: 15 months.</p>
<p>Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:</p> <p>None.</p>
<p>Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule:</p> <p>Stakeholders questioned the reason for the elimination of the infant bonus. Providers were not in favor of the change, but because the funding source was no longer available, we were still in the position of ending the bonus.</p>

Department of Social and Health Services
Economic Services Administration
Division of Employment and Assistance Programs

Significant Legislative Rules Adopted
January 1, 2004 through November 4, 2005

1. General questions:

- a. How has rule-making changed for the ESA-Division of Employment and Assistance Programs (DEAP) since the adoption of the Significant Legislative Rule statute, RCW 34.05.328, in 1995?

Answer: There has been virtually no change in the rule-making process because for the most part DEAP administers rules relating only to client financial eligibility for public assistance programs. These types of rules are exempt from the significant legislative rule-making requirements under RCW 34.05.328(5)(b)(vii). There have been only two rules filed that have been deemed significant legislative rules in this reporting time period. Both rules required a Cost Benefit Analysis (CBA), and one also required a Small Business Economic Impact Statement under chap. 19.85 RCW.

- b. What additional costs has the Division of Employment and Assistance Programs experienced related with the more intensive rule-making requirements of RCW 34.05.328?

Answer: Generally, there have been no additional costs associated with significant rule-making because the majority of rules administered by the division are exempt from the significant legislative rule-making process.

- c. Have the significant legislative rule-making requirements adversely affected the Division of Employment and Assistance Program's ability to fulfill DSHS' mission, and how?

Answer: The requirement to prepare a Cost-Benefit Analysis was very time consuming and required months to complete. For Washington Telephone Assistance Program rules in chap. 388-273 WAC, this lengthy process required the division to file three successive emergency adoptions of the rule change while the regular adoption process was completed.

- d. Has there been any measurable increase or decrease in how the regulated community accepts the Division of Employment and Assistance Program's rules adopted under RCW 34.05.328?

Answer; No.

2. Significant legislative rules adopted by ESAS-DEAP during this period:

(Continued on following page)

<p>Subject Matter:</p> <p>WAC 388-273-0025, <i>Benefits you receive as a WTAP participant</i>, WAC 388-273-0030, <i>How you can apply for WTAP</i>, and WAC 388-273-0035, <i>What we reimburse the local telephone company</i>. Washington Telephone Assistance Program rules were amended for:</p> <p>(1) Establishment of WTAP payment limits for reimbursable services while streamlining the billing process, and (2) adding Community Services Voice Mail (CSVM) as a WTAP benefit as provide for by the 2003 Legislative Session (Chapter 134, Laws of 2003) effective July 2003.</p> <p>Adopted: July 23, 2004 as WSR <u>04-13-136</u></p> <p>Months to complete this rule-making: <u>13 months</u>.</p>
<p>Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:</p> <p>None.</p>
<p>Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule:</p> <p>DEAP determined that there were 28 telephone companies that participate in WTAP, of which, there were of which 19 could be considered small businesses. A notification of the proposed changes to the reimbursement rates was sent to all 28 telephone companies in May 2003 prior to the formal rule adoption process. This notice solicited comments on the proposed changes. There were no comments received.</p> <p>The combined Cost-Benefit Analysis/Small Business Economic Impact Statement was developed using monthly invoices provided by the affected telephone companies. This information was submitted to the telephone companies for review and comment in January 2004, prior to filing the proposed rule. There were no comments received during this process.</p> <p>During the public hearing on the proposed rule, a single telephone company appeared to provide comment. These comments were considered and a response prepared to that telephone company. The final rule was adopted on July 23, 2004 without legal challenge.</p>

<p>Subject Matter:</p> <p>Amended WAC 388-310-0600 WorkFirst--Job search rules: To allow family members who are mandatory participants in WorkFirst to attend training at private institutions if the training meets the definitions of high wage/high demand as defined in WAC.</p> <p>Adopted: September 2, 2005 as WSR <u>05-16-107</u></p> <p>Months to complete this rule-making: 6 months.</p>
<p>Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:</p> <p>None.</p>
<p>Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule:</p> <p>DEAP, in consultation with the State Board of Community and Technical Colleges, determined that there would be minimal or no cost to other learning institutions that would be affected by this rule change. DEAP used existing mailing lists to inform concerned parties of the change proposal.</p> <p>There were no comments received during the review period or at the public hearing. The final rule was adopted on September 2, 2005 without challenge.</p>

Department of Social and Health Services
Health and Recovery Services Administration
Medical Assistance

Significant Legislative Rules Adopted
January 1, 2004 through November 4, 2005
(Including recently proposed rules)

1. General questions:

- a. How has rule-making changed for HRSA-Medical Assistance since the adoption of the Significant Legislative Rule statute, RCW 34.05.328, in 1995?

Answer: Preparing a cost benefit analysis on our provider rules is probably the biggest impact of RCW 34.05.328 on the HRSA-MA rule-making process. It can require a significant amount of research and data collection to prepare a CBA. The requirements of Governor's Executive Order 97-02 has had a much greater impact on rule-making within HRSA-MA.

- b. What additional costs has your Program experienced related with the more intensive rule-making requirements of RCW 34.05.328?

Answer: Indirect costs, such as staff salaries, related to the time spent researching and collecting data for cost-benefit analyses and completing the additional significant rule analysis and rule implementation plan (DSHS forms) required for rule-making.

- c. Have the significant legislative rule-making requirements adversely affected your Program's ability to fulfill DSHS' mission, and how?

Answer: No.

- d. Has there been any measurable increase or decrease in how the regulated community accepts your Program's rules adopted under RCW 34.05.328?

Answer: No.

2. Significant Legislative Rules adopted by HRSA-MA during this period:

(Continued on following page)

Subject Matter:

Chapter 388-530 WAC Pharmacy Services. Amended section 388-530-1300 General Reimbursement Methodology. This amendment is a change recommended by the DSHS Payment Review Steering Committee. The new language will help control pharmacy costs.

Adopted December 16, 2003 as WSR 04-01-089

Months to complete this rule-making: 7 months.

Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:

None.

Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule: Working drafts of the rule were sent to all persons who responded to the CR-101. In addition, HRSA sends working drafts of all rules to all Tribal Clinic Directors and Tribal Chairs for review and comment.

Subject Matter:

Amended WAC 388-501-0135 Patient requiring regulation (PRR), to redesign rule in order to improve client safety and reduce unnecessary department expense.

Adopted December 16, 2003 as WSR 04-01-099

Months to complete this rule-making: 12 months.

Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:

None.

Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule: Working drafts of the rule were sent to all persons who responded to the CR-101. In addition, HRSA sends working drafts of all rules to all Tribal Clinic Directors and Tribal Chairs for review and comment.

Subject Matter:

Chapter 388-532 WAC Family Planning Services. These rules were amended: To identify which medical assistance clients are eligible for family planning services; To state what family planning services will be available to the eligible clients; To describe how the services will be delivered and how the service providers will be paid. New WAC sections adopted: WAC 388-532-001, 388-532-110, 388-532-120, 388-532-130, 388-532-140, 388-532-500, 388-532-510, 388-532-520, 388-532-530, 388-532-540, and 388-532-550.

Adopted February 6, 2004 as WSR 04-05-011

Months to complete this rule-making: 22 months.

Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:

None.

Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule: Working drafts of the rule were sent to all persons who responded to the CR-101. In addition, HRSA sends working drafts of all rules to all Tribal Clinic Directors and Tribal Chairs for review and comment.

Subject Matter:

Chapter 388-527 WAC Services subject to (estate) recovery. Rules were revised to increase the scope of the state's recovery of costs of medical care from a client's estate in accordance with chapter 7, Laws of 2001 2nd Special Session, Part II, which required additional medical assistance costs to be subject to estate recovery by the department. These rules also implement the State Medicaid Manual (Part 3 - Eligibility, 01-01 General Eligibility Requirements and Options, 3810 Medicaid Estate Recoveries); 25 U.S.C. 1408; and 20 C.F.R. 416 Subpart K, Appendix IV.

Adopted April 30, 2004 as WSR 04-10-060

Months to complete this rule-making: 28 months.

Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:

None.

Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule: Working drafts of the rule were sent to all persons who responded to the CR-101. In addition, HRSA sends working drafts of all rules to all Tribal Clinic Directors and Tribal Chairs for review and comment.

Subject Matter:

New chapter 388-553 WAC Home infusion therapy/parenteral nutrition program. Incorporated into rule the home infusion therapy/parenteral nutrition program, including program limitations, restrictions and requirements.

Adopted May 5, 2004 as WSR 04-11-007

Months to complete this rule-making: 12 months.

Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:

None.

Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule: Working drafts of the rule were sent to all persons who responded to the CR-101. In addition, HRSA sends working drafts of all rules to all Tribal Clinic Directors and Tribal Chairs for review and comment.

Subject Matter:

Chapter 388-553 WAC, Chemical-using pregnant (CUP) women program. The department codified the policy for the chemical-using pregnant (CUP) women program, an established program which assists pregnant women in maintaining sobriety to ensure healthier birth outcomes by offering the following services to a pregnant woman and her fetus in a hospital setting: (1) Acute, medical detoxification; (2) stabilization; (3) medical, and (4) chemical dependency treatment.

Adopted May 5, 2004 as WSR 04-11-008

Months to complete this rule-making: 12 months.

Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:

None.

Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule: Working drafts of the rule were sent to all persons who responded to the CR-101. In addition, HRSA sends working drafts of all rules to all Tribal Clinic Directors and Tribal Chairs for review and comment.

Subject Matter:

Amending WAC 388-550-4900 Disproportionate share payments, 388-550-5100 Payment method -- MIDSH and 388-550-5200 Payment method -- SRHAPDSH; and adopting new sections WAC 388-550-5210 Payment method -- SRHIAAPDSH and 388-550-5220 Payment method -- NRHIAAPDSH. To implement chap. 25, Laws of 2003, 1st Special Session, the department added two new sections that establish the SRHIAAPDSH (small rural hospital indigent adult assistance program disproportionate share hospital) and NRHIAAPDSH (non-rural hospital indigent adult assistance program disproportionate share hospital) programs and establishing payment calculation methods for these programs. The rules also clarify and update payment methods for other disproportionate share hospital (DSH) programs.

Adopted May 28, 2004 as WSR 04-12-044

Months to complete this rule-making: 4.5 months.

Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:

None.

Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule: Working drafts of the rule were sent to all persons who responded to the CR-101. In addition, HRSA sends working drafts of all rules to all Tribal Clinic Directors and Tribal Chairs for review and comment.

Subject Matter:

Chapter 388-533 WAC Maternity related services. In accordance with the Maternity Care Access Act of 1989, Medical Assistance redesigned its maternity services, infant case management, and First Steps program to improve quality of services offered and to contain expenditure growth.

Adopted June 10, 2004 as WSR 04-13-049

Months to complete this rule-making: 11 months.

Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:

None.

Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule: Working drafts of the rule were sent to all persons who responded to the CR-101. In addition, HRSA sends working drafts of all rules to all Tribal Clinic Directors and Tribal Chairs for review and comment.

Subject Matter:

Chapter 388-546 WAC Transportation services. The department adopted amended and new rules to improve readability, clarify policy regarding emergency transportation services, and streamline program administration by making MAA's policy more consistent with Medicare's policy where practicable.

Adopted August 17, 2004 as WSR 04-17-118

Months to complete this rule-making: 7 months.

Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:

None.

Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule: Working drafts of the rule were sent to all persons who responded to the CR-101. In addition, HRSA sends working drafts of all rules to all Tribal Clinic Directors and Tribal Chairs for review and comment.

Subject Matter:

Chapter 388-550 Hospital Services - Outpatient prospective payment system (OPPS).

The Department adopted new rules to improve the area of outpatient hospital expenditures, by implementing a new Medicaid payment method for outpatient hospital services provided to Medicaid clients. The outpatient prospective payment system (OPPS) uses claims and cost data to calculate reimbursement to hospitals for the facility component of outpatient services, and uses ambulatory payment classifications (APCs) as the primary basis of payment.

Adopted October 1, 2004 as WSR 04-20-061 and 04-20-060

Months to complete this rule-making: 4.5 months.

Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:

None.

Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule: Working drafts of the rule were sent to all persons who responded to the CR-101. In addition, HRSA sends working drafts of all rules to all Tribal Clinic Directors and Tribal Chairs for review and comment.

Subject Matter:

Chapter 388-550 Hospital Services. The department revised the "outpatient short stay" and "inpatient hospital admission" definitions and program description, amending WAC 388-550-1050 Hospital services definitions. The department no longer uses the twenty-four-hours-or-less criteria in the definition for "outpatient short stay." That definition and related definitions were deleted or updated with alternative language as applicable. Hospital admissions are based on medical criteria rather than on time (twenty-four-hours-or-less criteria) in order to bring the department's policies in line with industry standards and promote administrative simplicity for providers.

Adopted October 1, 2004 as WSR 04-20-057, 04-20-058, and 04-20-059

Months to complete this rule-making: 4.5 months.

Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:

None.

Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule: Working drafts of the rule were sent to all persons who responded to the CR-101. In addition, HRSA sends working drafts of all rules to all Tribal Clinic Directors and Tribal Chairs for review and comment.

Subject Matter:

WAC 388-535A-0010 through 388-535A-0060, Orthodontic services. The rule updated and clarified existing policy regarding orthodontic services, including program definitions, provider requirements, expedited prior authorization, and reimbursement. In addition, the rules incorporated federal requirements of Public Law 104-101 (Health Insurance Portability and Accountability Act of 1996).

Adopted December 8, 2004 as WSR 05-01-064

Months to complete this rule-making: 14 months.

Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:

None.

Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule: Working drafts of the rule were sent to all persons who responded to the CR-101. In addition, HRSA sends working drafts of all rules to all Tribal Clinic Directors and Tribal Chairs for review and comment.

Subject Matter:

WAC 388-538-050, 388-538-060, and new 388-538-061 Managed care. The rules clarified existing managed care rules; revised WAC 388-538-060 to remove language regarding contract access standards; simplified enrollment process; and adopted new rules for the Washington Medicaid integration partnership (WMIP) or Medicare/Medicaid integration program (MMIP).

Adopted December 8, 2004 as WSR 05-01-066

Months to complete this rule-making: 5.5 months.

Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:

None.

Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule: Working drafts of the rule were sent to all persons who responded to the CR-101. In addition, HRSA sends working drafts of all rules to all Tribal Clinic Directors and Tribal Chairs for review and comment.

Subject Matter:

WAC 388-530-1050 through 388-530-1290, Pharmacy services. The rules implemented chapter 29, Laws of 2003, which directed state agencies to establish an evidence-based prescription drug program that identifies preferred drugs, develop programs to provide prescription drugs at a reasonable price to those in need, and increase public awareness regarding their sale and cost-effective use. To fulfill this legislative mandate, the rules established new sections in this chapter for preferred drug lists and the therapeutic interchange program (TIP). The rules also amended other sections to update, clarify, and make them consistent with the new sections.

Adopted December 30, 2004 as WSR 05-02-044

Months to complete this rule-making: 8.5 months.

Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:

None.

Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule: Working drafts of the rule were sent to all persons who responded to the CR-101. In addition, HRSA sends working drafts of all rules to all Tribal Clinic Directors and Tribal Chairs for review and comment.

Subject Matter:

New chapter 388-554 WAC, Enteral nutrition program. The Department incorporated into rule limitations, restrictions, and client and provider requirements for tube feeding and oral enteral nutritional products and supplies for eligible clients.

Adopted January 28, 2005 as WSR 05-04-059

Months to complete this rule-making: 17 months. (Note: The rule-making process took longer than normal due to the volume of stakeholder input and addressing stakeholders' concerns regarding the change in policy.)

Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:

None.

Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule: Working drafts of the rule were sent to all persons who responded to the CR-101. In addition, HRSA sends working drafts of all rules to all Tribal Clinic Directors and Tribal Chairs for review and comment.

Subject Matter:

Chemical using pregnant (CUP) women program; WAC 388-533-0710 CUP client eligibility, 388-533-0720 CUP provider requirements, and 388-533-0730 CUP covered services. The Department removed unnecessary barriers for clients to access services from CUP (chemical-using pregnant women) providers.

Adopted March 31, 2005 as WSR 05-08-061

Months to complete this rule-making: 5 months.

Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:

None.

Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule: Working drafts of the rule were sent to all persons who responded to the CR-101. In addition, HRSA sends working drafts of all rules to all Tribal Clinic Directors and Tribal Chairs for review and comment.

Subject Matter:

WAC chapters 388-531 Physician-related services, and 388-550 Hospital Services The Department established standards for selection of surgeons and hospitals performing gastric bypass (bariatric) surgery for eligible medical assistance clients and to establish criteria and pre- and post-operative requirements for clients that would further prevent the likelihood of complications.

Adopted May 20, 2005 as WSR 05-12-022

Months to complete this rule-making: 11.5 months.

Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:

None.

Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule: Working drafts of the rule were sent to all persons who responded to the CR-101. In addition, HRSA sends working drafts of all rules to all Tribal Clinic Directors and Tribal Chairs for review and comment.

Subject Matter:

Chapter 388-550 Hospital services. The amended rules allow the department to reimburse certain public hospitals through the "full cost" public hospital certified public expenditure (CPE) payment program. The department also updated, amended, and repealed other related sections. Clarifying language was added to explain how "high cost outlier" hospitals are paid for state administered program claims. The verbiage, "medically indigent (MI) costs or charges" was replaced with "charity costs or charges."

Adopted June 1, 2005 as WSR 05-12-132

Months to complete this rule-making: 4 months.

Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:

None.

Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule: Working drafts of the rule were sent to all persons who responded to the CR-101. In addition, HRSA sends working drafts of all rules to all Tribal Clinic Directors and Tribal Chairs for review and comment.

Subject Matter:

Chapter 388-544 Vision care services. This WAC revision updated and clarified policy regarding vision care services; client and program eligibility and scope of coverage of vision care services; and payment limitations. The rule changes brought the vision care services program into closer alignment with industry standards and safety.

Adopted June 6, 2005

as WSR 05-13-038

Months to complete this rule-making: 15 months.

Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:

None.

Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule: Working drafts of the rule were sent to all persons who responded to the CR-101. In addition, HRSA sends working drafts of all rules to all Tribal Clinic Directors and Tribal Chairs for review and comment.

Subject Matter:

Chapter 388-551 Alternatives to hospital services - Hospice program. The rule incorporated language from contracts with hospice care centers (HCCs) into chapter 388-551 WAC; clarified and updated hospice services definitions and rules; provided a standard for medically appropriate and fiscally responsible utilization; allowed stabilization of reimbursement payments for hospice services provided to medical assistance clients; adopted rules to incorporate into rule language for the pediatric palliative care (PPC) case management/coordination services program; and repealed outdated sections regarding election periods and notification requirements.

Adopted August 30, 2005 as WSR 05-18-033

Months to complete this rule-making: 17 months.

Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:

None.

Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule: Working drafts of the rule were sent to all persons who responded to the CR-101. In addition, HRSA sends working drafts of all rules to all Tribal Clinic Directors and Tribal Chairs for review and comment.

Subject Matter:

Amended WAC 388-531-2000 Increased payments for physician-related services for qualified trauma cases. The rule was revised to correct an unnecessarily restrictive element in current WAC that prohibits payments from the department's trauma care fund (TCF) to physicians for services provided to General Assistance-Unemployable (GA-U) and Alcohol and Drug Addiction Treatment and Support Act (ADATSA) clients. It was never legislatively intended to restrict TCF payments to physicians who provide services to GA-U and ADATSA clients, since no disproportionate share hospital (DSH) funds are used to pay physicians.

Adopted September 30, 2005

as WSR 05-20-050

Months to complete this rule-making: 4 months.

Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:

None.

Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule: Working drafts of the rule were sent to all persons who responded to the CR-101. In addition, HRSA sends working drafts of all rules to all Tribal Clinic Directors and Tribal Chairs for review and comment.

Subject Matter:

Chapter 388-532 WAC Family planning services. Revised the Reproductive health, Family planning only, and TAKE CHARGE program rules to:

- Add a new section on reproductive health;
- Clarify who is eligible for family planning only and TAKE CHARGE;
- Clarify provider requirements for reproductive health, family planning only, and TAKE CHARGE;
- Clarify when services are covered under family planning only and TAKE CHARGE (example: Must be performed in relation to a primary focus and diagnosis of family planning and must be medically necessary for the client to safely, effectively, and successfully use, or continue to use, their chosen contraceptive method);
- Clarify which services are covered under TAKE CHARGE;
- Clarify reimbursement for covered drugs, drug supplies, and devices under reproductive health, family planning only, and TAKE CHARGE;
- Add definition for ECRR services;
- Clarify documentation requirements for TAKE CHARGE; and
- Clarify when TAKE CHARGE providers are exempt from billing a third party.

Not yet adopted – proposed as WSR 05-14-123 on 7/1/2005; hearing was held August 23, 2005.

Months to complete this rule-making: 16 months to-date.

Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:

None.

Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule: Working drafts of the rule were sent to all persons who responded to the CR-101. In addition, HRSA sends working drafts of all rules to all Tribal Clinic Directors and Tribal Chairs for review and comment.

Subject Matter:

Chapter 388-543 WAC, Durable medical equipment (DME) and related supplies, prosthetics, and orthotics, medical supplies and related services. This WAC revision is intended to accomplish several objectives:

- Add advanced registered nurse practitioners (ARNPs) and physician assistants certified (PACs) to the list of eligible prescribers under this chapter;
- Exclude "Medicare/Medicaid" dual-eligible clients from the documentation requirement for prescriptions under WAC 388-543-1100 (1)(d) and 388-543-2800(1);
- Add "washable protective underwear" to list of diapers and related supplies under WAC 388-543-1150;
- Clarify language for standard specifications for disposable incontinence products to match the description in the healthcare common procedure coding system (HCPCS) manual; and
- Clarify products that cannot be used together under WAC 388-543-1150.

Adopted October 18, 2005 as WSR 05-21-102

Months to complete this rule-making: 5 months.

Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:

None.

Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule:

Working drafts of the rule were sent to all persons who responded to the CR-101. In addition, HRSA sends working drafts of all rules to all Tribal Clinic Directors and Tribal Chairs for review and comment.

Subject Matter:

Chap. 388-538 Managed care. Proposed rule changes in this chapter include:

- Adding a definition for "enrollees representative;"
- Adding the requirement of being a "recognized urban Indian Health Center or tribal clinic" to the Primary Care Case Management (PCCM) provider requirements;
- Adding "delivery case rate payment" under the managed care payment section;
- Clarifying that the department covers medically necessary categorically needy services that are excluded from coverage in the Managed Care Organization's (MCO) contract;
- Clarifying 90-day coverage policy for enrollees outside their service area for emergency care and for medically necessary covered benefits that cannot wait;
- Clarifying that the MCO must acknowledge receipt of grievances either orally or in writing within five working days and each appeal in writing within five working days;
- Revising current references to "provider," "appeal" to more current terms;
- Adding contract language on MCO oversight of delegated entities responsible for any delegated activity under Quality of Care; and non-compliance with contractual, state or federal requirements; and
- Adding language on individualized treatment plans for enrollees with special health care needs which ensure integration of clinical and non-clinical disciplines and services in the overall plan of care.

Proposed rules will be filed November 8, 2005 as WSR 05-23-027; hearing scheduled for December 27, 2005

Months to complete this rule-making: 10 months-to-date.

Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:

None.

Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule:

Working drafts of the rule were sent to all persons who responded to the CR-101. In addition, HRSA sends working drafts of all rules to all Tribal Clinic Directors and Tribal Chairs for review and comment.

Subject Matter:

Amending WAC 388-501-0165 Determination process for coverage of medical equipment and medical or dental services. Chapter 276, Laws of 2003, directed the department, the Department of Labor and Industries, and the Washington Health Care Authority to collaborate in the adoption and implementation of health services policies and procedures necessary to ensure prudent, cost-effective purchasing. Further, the legislature directed that the policies and procedures adopted by each agency should be based, to the extent possible, on the best available scientific and medical evidence.

Under the proposed amendment, the department will determine medical necessity individually and to base its review of requested service on the particular needs of each client by evaluating all relevant and available clinical information and medical evidence. The amendments will, however, strengthen the medical necessity determination process and increase confidence in the results reached by the department, by requiring that medical necessity decisions be made using a consistent, transparent, objective, and evidence-based framework, sensitive to both sound medical practice and effective utilization of funds.

Adopted November 8, 2005 as WSR 05-23-031

Months to complete this rule-making: 7 months

Legal actions related to failure to comply with RCW 34.05.328, costs of legal actions, and the outcome of the legal action:

None.

Stakeholder comments related to the impact of this significant legislative rule, or your Program's process of involving stakeholders to develop this rule: Working drafts of the rule were sent to all persons who responded to the CR-101. In addition, HRSA sends working drafts of all rules to all Tribal Clinic Directors and Tribal Chairs for review and comment.

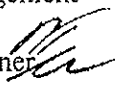


STATE OF WASHINGTON
EMPLOYMENT SECURITY DEPARTMENT

PO Box 9046 • Olympia, WA 98507-9046

November 14, 2005

TO: Victor A. Moore, Director
Office of Financial Management

FROM: Karen T. Lee, Commissioner 

SUBJECT: Report on Impacts of RCW 34.05.328(6)
Significant Legislative Rule-Making

Attached is the Employment Security Department's report on significant legislative rule-making actions taken by this agency since January 1, 2004. Stakeholder interest in our rule-making activities has increased substantially in the past few years. We are pleased to include them in our proposed actions and our decisions. We have participation from business organizations, labor and our claimants.

1. Significant Legislative Rules Adopted Since January 1, 2004

- December 3, 2004
New Section Chapter 192-110-200, 210 WAC, Applying for Unemployment Benefits
New Section Chapter 192-150-110, 115, 120, 125, 130, 135, 140, 150, 205, 210, 220 WAC, Job Separation
Amend Section Chapter 192-180-010, 025, 030 WAC, Job Search Requirements
Chapter 4, Laws of 2003, 2nd Special; Session (2ESB 6097).

The substantive changes in the law made it necessary to modify the rules related to an individual's eligibility for unemployment benefits, job search requirements, the job search monitoring program, penalties, overpayments, and the calculation of maximum benefits. Additional rules were adopted to define new eligibility terms contained in the legislation.

- November 12, 2004
Amended and adding a new section to Chapter 192-310-030, -075, WAC, Reporting of Wages and Taxes Due.
Chapter 4, Laws of 2003, 2nd Special Session (2ESB 6097).

The changes in the law made it necessary to define terms regarding ownership transfer, to clarify employer reporting requirements, to specify the order in which employer payments are applied, to set penalties for employers filing late or incomplete tax returns, and to clarify conditions for relief of benefit charges & conditions when employers will be assessed 100% of the charges.

2. Summary of Additional Costs

It is difficult to identify additional costs associated with these rules. We follow the same general procedure with all rule-making actions except for expedited adoptions and repeals. Of the requirements in RCW 34.05.328 (1), (3), and (5), the one impacting the Unemployment Insurance Division is the new requirement for a cost benefit analysis. Meeting the other requirements has become an intrinsic part of the rule-making process. A brief cost benefit analysis was developed for the tax rules implementing 2ESB 6097.

3. Legal Actions for Failure to Comply With RCW 34.05.328

None

4. Adverse Effects

It takes more time to adopt rules than it did 8-10 years ago. However, the causes aren't limited to RCW 34.05.328. They also result from amendments to the Administrative Procedures Act requiring increased opportunities for public input into the rule-making process. In the past, the agency was more in control of the content of rules. Now, we solicit public input at every step which increases the time we spend developing the rules, and the time spent responding to the public.

5. Rule Acceptability

Unknown

6. Stakeholder Comments

Stakeholders have expressed appreciation for our openness during the rule-making process, and stated they are provided more opportunity for input than with other agencies. The advantage of this process is that stakeholders are satisfied overall with the end result. We are unable to meet all the wishes of competing interests (business and labor), but at the end of the process, everyone appears to be satisfied that we listened to their input and we did accommodate their wishes whenever possible. We have never received a stakeholder complaint concerning our rule adoption process.

7. Other Relevant Information

See #4 above.

STATE OF WASHINGTON
FOREST PRACTICES BOARD

PO Box 47012
Olympia, WA 98504-7012

November 10, 2005

MEMORANDUM

TO: Jody Hooper, Governor's Executive Policy Office
FROM: Pat McElroy, Chair *L.S. Young, Acting*
SUBJECT: ESHB 1010 Significant Rulemaking Report

The following summary is provided for the 2006 Significant Rulemaking Report.

1. A list of the rules.

Marbled Murrelet - Incorporates the updated 1/6/2003, Pacific Seabird Group (PSG) protocol as the standard for surveying for Marbled Murrelets in forests. Provides a third year survey option for landowners.

Cultural Resources - Facilitates protection and management of cultural resources as they relate to forest practices and incorporates the Cultural Resources Model into the Watershed Analysis Manual.

Compliance with RCW 34.05.328 did not affect the substance of the rules.

2. A summary of additional costs.

Any additional costs are associated with staff time in planning and implementing the requirements under RCW 34.05.328.

3. Description of any legal actions.

No legal actions have been initiated.

4. Adverse effects.

The directives under RCW 34.05.328 did not have an adverse impact on the Board's capacity to meet its legislatively prescribed mission.

5. Rule acceptability.

No measurable change for the adopted rule has been noted. RCW 34.05.328 increased the information available to the regulated community which results in more specific comments from stakeholders and a better understanding of the decision-making by the agency.

6. Stakeholder comments.

The Board has not received any comments on the impacts of significant legislative rulemaking requirements.

Jody Hooper, Governor's Executive Policy Office
November 10, 2005
Page Two

7. Other relevant information.

The additional requirements of ESHB 1010 have not hindered the Board in fulfilling its mission.

Please contact Patricia Anderson, Rules Coordinator for the Board, at 902.1413 if you have any questions.

paa/



OFFICE OF
INSURANCE COMMISSIONER

*Report on Impacts of
RCW 34.05.328 on the
Office of the Insurance Commissioner*

Submitted by
Melodie Bankers, Rules Coordinator

1. List of rules adopted under RCW 34.05.328 since January 1, 2004 and how compliance with these requirements affected the substance of the rule, if any, as finally adopted.

The Office of the Insurance Commissioner considered the following rules adopted since January 1, 2004 to be "significant legislative rules" for rule-making purposes. The requirements of RCW 34.05.328 were met except when those rule-making requirements were exempted by the use of the expedited rule-making process or duplicated federal regulation.

R number	Name of Rule	New	Amended	Repealed
2003-02	2001 Commissioner's Standard and Ordinary (CSO) Mortality Table	7		
2002-05	Rental car insurance limited agent license	16		
2003-08	Standards for coverage of chemical dependency		2	
2002-02	Credit Life, Credit Accident and Health Insurance	17		7

2. Summary of additional costs associated with the more intensive rulemaking requirements for significant legislative rules:

The rules unit is a component of the Policy Division. Members of the Policy Division work with other OIC staffers to draft the proposed and final text. An economist was hired by the Policy Division to conduct the economic analyses.

Staff time increased significantly compared to the time necessary for rule making prior to ESHB 1010. Mailing costs also increased significantly after ESHB 1010 but have held fairly steady over the last several years. Costs of a rule-making can vary significantly depending on the length and complexity of the rule, number of staffers involved and the amount of their time necessary to develop the rule, and mailing costs. There are no "average rule-makings" but typical costs can run \$20,000-40,000. The agency utilizes expedited rule-making to achieve savings when possible. The agency reduces costs while increasing access by utilization of electronic distribution. The agency currently uses a

listserv to e-mail rule-making information to interested parties. Over time, the agency hopes to significantly reduce hard copy mailings and their associated costs.

3. Description of legal actions against agency for failure to comply with RCW 34.05.328, costs of such actions, and the status of the outcome of the action:

No legal action has been undertaken against the agency for failure to comply with RCW 34.05.328.

4. Adverse Affects. The extent to which significant legislative rulemaking requirements have adversely affected the capacity of the agency to fulfill its legislative mission

The requirements had several major impacts on rulemaking at the Office of the Insurance Commissioner.

First, the requirements significantly increased the staff time and costs associated with rulemaking. The increase in staff time was primarily for increased duties for economists and attorneys.

Second, the requirements have slowed the agency's response to changing circumstances. The amount of time that is required by the significant legislative rulemaking processes can hinder the agency's ability to quickly address or respond to an issue. The requirements for significant legislative rulemaking can slow the time-lines of rulemaking by weeks or months. Even in areas where there is agreement on the rule from all parties, the processes take significantly longer to complete.

Third, the increased amounts of staff time spent on rulemaking processes limits the number of processes that can be undertaken at one time. Since the rule-making processes are more complex and longer, fewer issues can be addressed.

5. Descriptions of any measurable increase or decrease in the acceptability by the regulated community of rules adopted under these requirements:

The agency has detected no change at all in the attitudes of the regulated community with regards to the acceptability of our rules that can be attributed to the APA processes. Commissioner Kreidler puts a high priority on the accessibility of all interested parties to the OIC rule-making process. He believes that interested parties participating in a dialogue can lead to improved rules and better compliance. The agency increased efforts to engage industry and interested parties in an exchange of ideas under Commissioner Kreidler. The stakeholder work by the OIC goes far beyond what is mandated by the APA. These increased OIC efforts are applauded by industry. Industry believes that Commissioner Kreidler listens to their concerns though he may not agree with their positions. This has increased the acceptability of OIC rules, not the APA processes. If the industry believes that the dialogue is only to satisfy an APA requirement, there is no increase in their trust of the agency or in the acceptability of the rule. Ultimately, the acceptability of a rule depends on the text of the rule and the perceived fairness of the agency not the process required by the APA.

Office of the Insurance Commissioner
RCW 34.05.328 Report
11/14/05

6. Stakeholder comments

Some aspects of the rulemaking process can confuse stakeholders. Some stakeholders do not understand what a CR-101 is or why they have received it. A common misunderstanding is the belief that the agency is farther along in rule-making than it is. Stakeholders who receive a CR-101 or see it on the website often call or write asking for finished text of the regulation when the agency is just beginning to discuss concepts. Generally, at that point, it is not known when text will be completed or when the rule-making hearing will be scheduled. All interested parties are encouraged to comment in writing at the CR-101 stage and at any future time throughout the rule-making. Another problem is that when a rule is at the CR-102 stage, stakeholders often believe that the rule is adopted. The CR-105 leads some recipients to believe that they must respond or take some action, as if it were some sort of a citation.

Stakeholders can be confused by economic analysis process. The Small Business Economic Impact Statement (SBEIS) addresses the costs and impacts of the rules upon those to be regulated by a proposed rule. Interested persons often want their economic situations taken into account, whether or not they are directly regulated by the OIC. They often ask if we look at all possible downstream costs that could affect them. While the OIC considers all comments and known impacts, it would be impossible to ascertain all potential downstream costs on all possible parties. That is not achievable, nor is it the purpose of the SBEIS.

7. Other relevant information, such as how rulemaking has changed in your agency since 1995 and whether the significant legislative rulemaking requirements have helped or hindered in fulfilling your agency's mission.

Rulemaking has changed greatly at the Office of the Insurance Commissioner since 1995. The requirements under 1010 have had several major impacts on rulemaking.

First, the requirements significantly increased the staff time and costs associated with rulemaking. The increase in staff time was primarily for increased duties for economists and attorneys.

Second, the requirements have slowed the agency's response to changing circumstances. The amount of time that is required by the significant legislative rulemaking processes can hinder the agency's ability to quickly address or respond to an issue. The requirements for significant legislative rulemaking can slow the time-lines of rulemaking by weeks or months. Even in areas where there is agreement on the rule from all parties, the processes take significantly longer to complete.

Third, the increased amounts of staff time spent on rulemaking processes limits the number of processes that can be undertaken at one time. Since the rule-making processes are more complex and longer, fewer issues can be addressed.

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To accommodate persons with disabilities, this document is available in alternative formats and can be obtained by contacting the Office of Financial Management at 360/902-0608 or TTY 360/902-0679.